Supreme Court, U.S.
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No. (1)

In The

Supreme Court of the United States

PADMA RAO,

Petitioner,

v.

CITY OF EVANSTON, ILLINOIS,

Respondent.

On Petition For Writ Of *Certiorari*
To The Appellate Court Of Illinois,
First District

PETITION FOR WRIT OF *CERTIORARI*

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QUESTIONS PRESENTED FOR REVIEW

Do the Fourteenth and First Amendments preclude a City from requiring a citizen to choose between her religious precepts and her home? Can a City levy a special assessment tax against a citizen's home specifically to fund an act that is a direct violation of that citizen's religious precepts, when that act does not serve any compelling government need? Do the Fourteenth and First Amendments preclude the Appellate Court of Illinois from waiving defenses based on religious rights that were raised before the trial court and included in the Record?

Do the Fourteenth and Fifth Amendments require due process and just compensation for the taking of private property by a City, when that private property is part of the common elements of a residential condominium? Does the assent of one or more condominium unit owners to an uncompensated taking of real property by a City extinguish another unit owner's Fourteenth and Fifth Amendment rights to due process and just compensation for the taking? Can the Appellate Court of Illinois simultaneously hold that a condominium unit owner is properly sued and taxed because she owns the common elements, but that the *same* unit owner cannot assert property rights under the Fifth and Fourteenth Amendments to defend against a taking of that *same* property?

QUESTIONS PRESENTED FOR REVIEW – Continued

Does the Fourteenth Amendment preclude the Appellate Court of Illinois from excusing strict compliance with provisions of State law, when prior case law in Illinois held those provisions to be a mandatory protection for other citizens? Does the Fourteenth Amendment preclude the Appellate Court of Illinois from basing its decision upon incorrect facts that are contradicted by the Record?

PARTIES TO THE PROCEEDING

Petitioner: Padma Rao ("Padma"), an individual and non-attorney *pro se*, as owner of the real property commonly known as 2246 Sherman Avenue, Unit 3; Evanston, Illinois 60201, which is a condominium unit and its appurtenant ownership in the common elements. The original proceeding was *in rem* against the real property. Padma was the Respondent-Objector or Defendant (App. 1) in the original proceeding.

Respondent: City of Evanston, Illinois ("City"), " . . . an Illinois Municipal Corporation . . . " (C00002). City was the Petitioner or Plaintiff (App. 1) in the original proceeding.

The remaining seventy-eight (78) original Respondents or Defendants (C00007-12) did not enter any appearance at trial and were not parties in the appeal.

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The Order of the Illinois Appellate Court entered on 26 June 2009 in *City of Evanston v. Rao,* 1-07-2650, is unpublished and reproduced at App. 1-32. The Order of the Illinois Supreme Court in *City of Evanston v. Rao*, 109040, denying the *Appeal* is unpublished, reported at 234 Ill 2d 518, and reproduced at App. 38.

The Orders of the Circuit Court of Cook County entered on 26 June 2007 and 24 August 2007 in *City of Evanston v. Rao*, 2007 COSA 000003, are unpublished and reproduced at App. 35-37 and App. 33-34, respectively.

JURISDICTION

This Court has jurisdiction pursuant to 28 USC §1257(a), which states: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the . . . statutes of . . . the United States."

This Court has jurisdiction pursuant to Article III Section 2 of the Constitution, which states: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, [and] the laws of the United States . . . the Supreme Court shall

have appellate jurisdiction, both as to law and fact. . . ."

The Illinois Supreme Court's Order denying the *Appeal as of Right and alternative Petition for Leave to Appeal* ("*Appeal*") was entered on 25 November 2009 (App. 38). The Illinois Appellate Court's Order was entered on 26 June 2009 (App. 1). On 18 February 2010, Justice Stevens extended the time to file this Petition for Writ of *Certiorari* to and including 23 April 2010.

Petitioner Padma Rao ("Padma"), a non-attorney, raised defenses in the Circuit Court of Cook County, Illinois involving rights that are protected by the Constitution and laws of the United States (Record pages C00051, C00058-C00082, C00208-00210, also App. 60-62). The Appellate Order mentions some of the Federal Constitutional and statutory issues raised by Padma (App. 4-5, App. 11-12, App. 16-24, App. 29-31). This Court therefore has jurisdiction of this case pursuant to 28 USC §1257(a) and Article III Section 2 of the Constitution, cited above.

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCE

The Constitutional provisions and statutes relied upon are lengthy and included in the Appendix. These include the First Amendment (App. 39), Fifth Amendment (App. 39), Fourteenth Amendment (App. 39-40), 42 USC §1981 (App. 40-41), 42 USC §1982

(App. 41), 42 USC §1983 (App. 41-42), 42 USC §1985 (App. 42-44), 42 USC §1986 (App. 44-45), and 42 USC §1988 (App. 45-46).

The ordinance at issue is Evanston City Ordinance 03-O-07 ("Ordinance"), drafted on 02 January 2007, adopted on 26 March 2007, approved on 03 April 2007, and filed in the Circuit Court on 19 April 2007. It is lengthy and included in the Appendix at App. 47-56.

STATEMENT OF FACTS

Note: citations to the Record are included as, for example, "(C00208-210)."

The Board of Local Improvements ("BLI") of the City of Evanston ("City") adopted a resolution to pave an existing gravel alley on 11 September 2006 (C00003, App. 57) by special assessment tax levied against abutting properties, through the Illinois Municipal Code 65 ILCS 5/9-2-1 *et seq.* (C00019, App. 49). The alley is owned by the City, with part owned by the Housing Authority of Cook County ("HACC") at 2300 Noyes Court with an easement for traffic and utilities (C00216-Ex11). The alley is near six single-family homes (PINs 11-07-115-001-0000 to -006-0000), a recently-converted condominium (PIN 11-07-115-012-0000), a two-flat (PIN 11-07-115-013-0000), the "2300 Sherman Ave. Condominium" (C00115) (PINs 11-07-115-023-1001 to -1022), and the Corinthian Condominium ("Corinthian") (PINs 11-07-115-024-1001

to -1033) (C00007-12, C00089-90). The Corinthian is Padma's condominium, in which she owns the property commonly known as 2246 Sherman Avenue, Unit 3 (PIN 11-07-115-024-1010). The condominiums are independent and separate from each other and from the houses.

The City's published rule, sent by US Mail to Padma's residence, is that at least fifty-one percent (51%) of owners of abutting property must sign a petition to initiate an alley paving project (C00091). The 2300 Sherman Ave Condominium actively campaigned for the project to neighboring property owners (C00115-117, C00118, C00120). The Corinthian intimidated its unit owners to sign the petition for the project and harassed Padma when she did not agree (C00122-124, C00127-131, C00133, C00140). Padma repeatedly informed the City that signatures on the petition were obtained through intimidation (C00061-64, C00095, C00134-135, C00140). One month *after* the BLI's resolution (C00003), a petition was received by the City on 11 October 2006 per the date-stamp (C00107-111). The petition included invalid entries: some signatures for properties were not those of the owners according to the Cook County Recorder of Deeds ("CCRD") (C00109, C00111, C00098-102), some were duplicates for the same properties (C00109-111), and one is a printed name and not a signature (C00110). Padma submitted evidence to the Circuit Court from CCRD (C00098-102) and from the City (C00107-111) proving the invalidity of the signatures, while the City introduced no evidence to the contrary.

When these invalid signatures are excluded, then no more than 39 of 79 property owners, or less than 50%, signed the petition.

The BLI passed an Adhering Resolution on 12 December 2006 (C00004, App. 59) and an Ordinance was drafted on 2 January 2007 (C00019, App. 48). The public hearing was held later, on 10 January 2007 (C00003, App. 57), at which time Padma and two (2) other affected property owners objected to the project (C00114). The BLI did not adopt a new resolution following the hearing.

The City stated that a tree at the Northwest corner of the common elements of Padma's condominium was mainly private property (C00093, C00151, C00154, C00155, C00216-Ex13). City officials verbally stated that this tree was referred to in the Cost Estimate of the Ordinance as an entry for "tree removal" (C00026, App. 55). The Ordinance lacks any description of the location, number, and ownership of the tree(s) or of any need for "tree removal" (C00019-26, App. 47-56). The City's survey (C00216-Ex13) shows that the tree does not obstruct the alley, since a utility pole next to it extends further into the alley, precluding pedestrian or vehicular use of that section. The Ordinance (C00018-26, App. 47-56) describes paving an *existing* gravel alley, and the tree did not obstruct that existing alley in any way. The City stated that the tree would be protected (C00118, C00216-Ex13). Later, the City stated that if Padma's condominium wanted the City to spare the tree, the City could and would do so (C00093, C00121, C00154).

The City's Arborist told Padma that the tree has no infectious or contagious disease and poses no public safety risk (C00069, C00074, C00137), and the City neither refuted these assertions nor provided any contrary evidence at trial. The City never stated any need whatsoever to kill the tree.

The City filed a Petition (C00002) in the trial court on 19 April 2007, along with the Ordinance (C00019-26, App. 47-56) taxing "tree removal" as part of the cost to be taxed (C00026, App. 55). However, the Ordinance (C00019-26, App. 47-56) does not describe the number, location, or ownership of the tree(s) targeted. The City did not file eminent domain proceedings against Padma's condominium.

Padma had informed the City that the legitimacy of the Corinthian's board was disputed (C00071, C00137) and the subject of separate legal proceedings in the Cook County Circuit Court (*Rao v. Kass, et al.*, 2007 M2 000902). A letter from an individual identifying herself as president of the Corinthian dated 27 April 2007 and date-stamped 02 May 2007 states that the board decided that the City could remove the tree " . . . at the city's expense . . . " (C00157). However, this decision was made after the City had already filed this action in the Circuit Court, wherein the Ordinance (C00026, App. 55) taxes the "tree removal" cost against all properties involved, and not exclusively to the City; the Ordinance gives no reason or explanation for this expense and makes no provision whatsoever for payment of compensation to the owners of the tree. The trial court's orders (C00202, C00211, App. 33-37) do not vest title for the tree in the City.

Padma's objection to removal of the tree by the City is based in her religion, Hinduism, which forbids the needless killing of any living thing and includes a particular reverence for trees (C00208-210, App. 60-62). Padma's religious precepts require her to not only refrain from unnecessarily killing trees, but those precepts also forbid Padma from participating, acquiescing in, or funding such killing as an abhorrent act (C00208-210, App. 60-62).

The City sought to impose an equal special assessment tax against each private property, regardless of frontage on or lawfully permitted use of the alley, regardless of actual benefit, and regardless of whether the property is a house or a condominium apartment unit (C00007-12). The basis offered by the City for choosing this method is that it reduces the tax for some (C00088, C00141, C00151). Traffic on the alley and Padma's condominium is one-way and single-lane (C00089-90, C00092-93, C00216-Ex11), so Padma could lawfully use only a tiny fraction of the alley to exit the condominium and none to enter (entry is only possible from Sherman Avenue). The HACC owns the property commonly known as 2300 Noyes Court, which consists of 100 apartment units (C00103-104). The City taxed the 79 private units $50,166.39, but paid only $27,536.99 on behalf of the HACC's 100 units (C00012). The City thus used one method to compute the tax on the private residences, including apartments, and a different method for the publicly-owned residential apartments.

The City stated that the project would lower its upkeep costs (C00091, C00093) one City alderman stated by e-mail " . . . After driving down the alley

today, I would think that a paved alley is preferable to the current state . . . " (C00088, C00141). Padma expressed concern that the project would reduce the value of her property by creating dangerous traffic patterns in close proximity (C00053-55, C00096-97, C00136, C00153) In response, a City official stated by letter " . . . We do not believe that alley paving has any negative impact on property values . . . " (See 00092), but provided no factual basis for his assertion (C00092-93). The City did not enforce one-way and speed laws in the alley (C00053-55, C00136), and did not cite a driver who tried to justify wrong-way use of the alley as a means of avoiding traffic lights on the main road (C00094). The sale prices in Padma's condominium, comparing units having the same percentage ownership in the common elements, fell sharply after the City's project according to data from CCRD (Appellant Brief Appendix pages A167 vs A168, C00099 vs A169).

The City's surveys show a change in the shape and course of the alley, forcing traffic closer to Padma's property (C00089-90 vs C00216-Ex13). All documents filed by the City use the CTA Railroad as the West boundary for the project (C00002, C00003, C00006, C00014, C00015, C00017, C00019, C00023, C00025; App. 33, App. 35, App. 47-48, App. 52, App. 54, App. 57). However, a part of the alley extends West of the North branch of Noyes Court but remains East of the CTA railway (C00089). The three (3) properties abutting that part of the alley (C00089) are not included in the Assessment Roll (C00007-12). The Ordinance refers to " . . . the South leg . . . " of the alley, without defining the location or extent thereof

(C00019, C00023, C00025; App. 48, App. 52, App. 54, App. 57). The cost estimate (C00025-26, App. 55) includes entries for removal and/or placement of pavement, sidewalk, driveway, curb, topsoil, and sodding. The foregoing issues, to wit: change in shape and course of the alley, inclusion or exclusion of the portion West of the North Branch of Noyes Court but East of the CTA railway, extent and location of " . . . the South leg . . . " of the alley (C00019, C00023, C00025), and reason for seemingly unrelated entries in the cost estimate are not explained or elaborated in the Ordinance (C00019-26, App. 47-56).

The Corinthian consists of one (1) building with frontage along the West side of Sherman Avenue and contains multiple apartment-style units (C00009-12, C00089-90, C00161). The City's legal description of Padma's property, under which the City seeks a judgment against the property, states that it is " . . . lying East of the Center of Sherman Road . . . " (C00009-10, C00160). The Plat of Survey (C00161) under which the property was conveyed to Padma does not contain that phrase, and the maps show that Padma's property is entirely West of Sherman Avenue (C00089-90).

Court History

The City filed its Petition (C00002) against the properties, including Padma's property (C00007-12) in the Circuit Court on 19 April 2007. Padma wrote an Objection (C00051-84) and collected supporting documentary Exhibits (C00085-164, C00216-Ex11, 13, 15) *pro se*. These items were filed in the Circuit Court by Padma's attorney, Douglas Cannon ("Attorney

Cannon") on 01 June 2007. The Circuit Court set a hearing date for 26 June 2007 (C00165).

Padma's Objection in defense of her property included Federal issues, specifically: due process and equal protection (including: procedural due process, void for vagueness claims, and the Fourteenth Amendment) (C00051, C00058-68, C00071-72, C00076-82); right to due process and just compensation for the taking of Padma's property by the City (Fifth Amendment) (C00068-76); rights and remedies for deprivation of Padma's civil rights, conspiracy to deprive Padma of civil rights, and failure of the City to prevent the deprivation of Padma's civil rights (42 USC §§1981, 1982, 1983, 1985, 1986, 1988) (C00063, C00068, C00075).

On 26 June 2007, the Circuit Court ruled against Padma and her property and in favor of the City (C00202, App. 35-37). Attorney Cannon filed a Motion for Reconsideration on Padma's behalf (C00187-191). Padma wrote an Affidavit describing how the City's plan to unnecessarily kill a tree was abhorrent to Padma's religious beliefs and that forcing Padma to fund the unnecessary killing of a tree forces Padma to violate her religious precepts (C00208-210, App. 60-62). Padma thus raised a defense based on her First Amendment religious rights. Padma's Affidavit was executed pursuant to CCP 1-109 (Illinois Code of Civil Procedure 735 ILCS 5/1-109) under penalties of perjury (C00210, App. 62), which is a verification by certification procedure similar to that described in 28 USC §1746. The Circuit Court accepted Padma's Affidavit and made it part of the Record by part 3 of an Order (C00211, App. 33). The City never alleged

any irregularity in the content or execution of Padma's Affidavit.

On 24 August 2007, the Circuit Court ruled against Padma and her property and in favor of the City (C00211, App. 33-34). Padma *pro se* filed timely Notice of Appeal to the Illinois Appellate Court (C00212-214), appealing from the Circuit Court Orders of 26 June 2007 (C00202, App. 35-37) and 24 August 2007 (C00211, App. 33-34), with the exception of part 3 of the latter that made Padma's Affidavit part of the Record (C00211, App. 33).

The Illinois Appellate Court entered an unpublished Order against Padma and her property and in favor of the City on 26 June 2009 (App. 1-32). The Illinois Appellate Court denied Padma's *Petition for Rehearing and Application for Certificate of Importance* by an unpublished Order entered on 22 July 2009. The Illinois Supreme Court denied Padma's *Appeal as of Right and alternative Petition for Leave to Appeal* ("*Appeal*") by an unpublished Order entered on 25 November 2009 (App. 38). Subsequent events in the Illinois Supreme Court are discussed in Padma's *Motion to Extend the Deadline to File a Petition for a Writ of Certiorari* filed with this Court on 13 February 2010. On 18 February 2010, Justice Stevens extended the time to file this Petition for Writ of *Certiorari* to and including 23 April 2010.

Padma pressed the Federal issues along with the State issues in the reviewing State courts. The Illinois Appellate Court's Order mentions some of the

Federal issues argued by Padma, including: deprivation of Padma's right to due process (App. 4, App. 16-22); deprivation of Padma's property by the City without just compensation or due process (App. 4, App. 16-22); excessive vagueness of the City's Ordinance (App. 4, App. 11-12, App. 22-25); the City's violation of Padma's right to free exercise of religion (App. 5, App. 17, App. 22); " . . . federal and state law violations regarding her [Padma's] due process and equal protection rights . . . " (App. 29); and " . . . 42 U.S.C. §1985 and related provisions regarding collusion . . . " (App. 30).

REASONS TO GRANT THIS PETITION

The fundamental reasons to grant this Petition are:

1. First Amendment religious rights, Fifth Amendment property rights, and Fourteenth Amendment due process and equal protection rights are inherently important;

2. the rights of a large number of Americans are at stake, specifically those of every condominium owner; and

3. the Appellate Court's Order conflicts with decisions of this Court, Illinois courts, and other State courts.

Free Exercise of Religion and Governmental Action: First and Fourteenth Amendments

Padma's religion, Hinduism, taught her that needlessly killing any living thing, including a tree, is abhorrent, as is participating in, funding, or otherwise acquiescing in a needless killing (C00208-210, App. 60-62). The Ordinance taxes the cost for "tree removal" against Padma's property (C00026, App. 55), even though the City stated that the tree need not be killed (C00093, C00118, C00121, C00154 C00216-Ex13). Therefore, Padma defended against the City's plan to kill the tree and tax the cost against her and her property, based on her religious rights (C00208-210, App. 60-62). Padma's Affidavit clearly states that the City was forcing her to violate her religious principles by imposing a tax against her and her property for the unnecessary killing of the tree (C00209, App. 62). The Circuit Court acknowledged Padma's defense and its timeliness by specifically making Padma's Affidavit part of the Record (C00211, App. 33).

The First Amendment provides that the free exercise of religion shall not be prohibited, while the Fourteenth Amendment forbids any State from abridging this privilege or immunity. The Religious Freedom Restoration Act 775 ILCS 35/15 forbids the government from substantially burdening a person's exercise of religion unless it shows that the application of the burden to the person both serves a compelling governmental interest and is the least restrictive means of serving that interest. The Act 775 ILCS 35/5 states: "' . . . Exercise of religion' means an act or refusal to act that is substantially motivated by religious belief, whether or not the

religious exercise is compulsory or central to a larger system of religious belief. . . ." Padma submits that her refusal to participate in or fund the needless killing of a tree by the City is a Constitutionally protected right.

This Court held it unconstitutional for a citizen to be forced to choose between following her religious precepts and receiving government unemployment benefits:

> Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

Sherbert v. Verner, 374 U.S. 398 at 404, 83 S. Ct. 1790 at 1794 (1963). This Court's compelling interest test stated in *Sherbert v. Verner* was specifically adopted by the Illinois legislature in the Religious Freedom Restoration Act 775 ILCS 35/10(a)(6).

By seeking a judgment against Padma's property to unnecessarily kill a tree, the City creates a situation for Padma that is as untenable as the one described in *Sherbert v. Verner*: Padma is forced to

either follow her religious precepts and lose her home to a tax sale, or to pay the tax in order to save her home and thereby violate her religious tenets.

The Appellate Court did not consider Padma's First and Fourteenth Amendment Constitutional religious rights, and did not acknowledge that those religious rights are Constitutionally protected (App. 22). The stated basis for waiver is that Padma did not cite the Religious Freedom Restoration Act (775 ILCS 35/1 *et seq.*) at trial, but cited it on appeal (App. 22). Neither the Circuit Court (C00211, App. 33) nor the City questioned the content or execution of Padma's Affidavit describing her religious precepts (C00208-210, App. 60-62), or its inclusion in the Record.

Padma is not an attorney and lacks any legal training, so she probably pleaded her Constitutional religious rights inartfully. However, this Court held that:

> No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented. (internal citations omitted)

New York ex rel Bryant v. Zimmerman, 278 U.S. 63 at 67, 49 S. Ct. 61 at 63 (1928). Further, this Court held that: "A document filed *pro se* is 'to be liberally construed,' . . . and 'a *pro se* complaint, however inartfully pleaded, must be held to less stringent

standards than formal pleadings drafted by lawyers,' . . . 'All pleadings shall be so construed as to do substantial justice'" (internal citations omitted) *Erickson v. Pardus*, 551 U.S. 89 at 94, 127 S. Ct. 2197 at 2200 (2007).

The Appellate Court states: " . . . because we have already established that the tree did not belong to Rao, we need not address these arguments [including religious rights] . . . " App. 22. However, Padma's religious objection to the needless killing of a tree does not depend on ownership of the tree: Padma would have the same religious objection to funding or participating in unnecessarily killing a stranger's tree.

Condominium Property Rights and Governmental Taking: Fifth and Fourteenth Amendments

In Illinois, it is well-settled that a standing tree is real property. *Osborn v. Rabe*, 67 Ill 108 at 109 (1873). Nowhere in the Appellate Court's Order (App. 1-32) is this position contradicted, therefore the tree in question is real property protected by the Constitution, specifically the Fifth and Fourteenth Amendments.

The Fifth Amendment provides that: "No person shall . . . be deprived of . . . property without due process of law; nor shall private property be taken for public use, without just compensation." The Fourteenth Amendment forbids any State from abridging these privileges or immunities, and reiterates the requirement for due process before any person is deprived of property.

This Court has held that Constitutional protection for the rights of private property cannot be made to depend on the size of the property at stake: *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 at 436, 102 S. Ct. 3164 at 3176-3177 (1982). In a proceeding of this type, property cannot be taken until a court fixes the amount of compensation and the City actually pays that amount: *Cohen v. City of Chicago*, 377 Ill 221 at 229-231, 36 NE 2d 220 at 224 (1941).

The Eminent Domain Act 735 ILCS 30/1-1-1 *et seq.* states specific conditions and limitations on the governmental taking or damaging of private property, including but not limited to: the requirement for the condemning authority to prove that the taking is necessary (735 ILCS 30/5-5-5(b)); and the requirement that if property to be taken or damaged is part of the common elements of a condominium, the condemning authority must file court action against the condominium association and that any unit owner may intervene in the proceeding as party defendant (735 ILCS 30/10-5-10(e)). The Condominium Property Act 765 ILCS 605/9.3 and 9.4, also states that if a common element is to be taken or damaged, then the condemning authority must file court action against the association and that any unit owner may intervene in the proceedings.

The Condominium Property Act 765 ILCS 605/8 states that the common elements cannot be divided or partitioned. The Act 765 ILCS 605/4(e) states that the percentage of ownership in the common elements

appurtenant to each unit cannot be changed except by agreement of all unit owners.

In a condominium, "The association does not own the common elements. The proposed class members [unit owners] own the common elements as tenants in common": *Tassan v. United Development Company*, 88 Ill App 3d 581 at 596, 410 NE 2d 902 at 914 (1 Dist 1980). One tenant in common alone cannot grant permission to a third party to damage or take common property: *Murray v. Haverty*, 70 Ill 318 at 320 (1873). An act which deprives a unit owner of access to part of the common elements to which he previously had access is a taking and cannot be permitted except by unanimous approval of all unit owners: *Grimes v. Moreland*, 41 Ohio Misc 69 at 74, 322 NE 2d 699 at 703 (1974) (holding that without unanimous approval requirement, majority of unit owners could take common area from minority); *Carney v. Donley*, 261 Ill App 3d 1002 at 1009-1010, 633 NE 2d 1015 at 1020-1022 (2 Dist 1994) (holding that association board lacks authority to diminish access to common elements of unit owner who previously had access thereto).

Contrary to the statutes and case law, the Appellate Court states that Padma does not own the common elements and that the association owns the common elements (App. 20-21). The Appellate Court's position that Padma would lack standing in an eminent domain proceeding to take part of the common elements of her condominium (App. 21) directly contradicts applicable laws (735 ILCS 30/10-5-10(e),

765 ILCS 605/9.3 and 9.4) and ignores the statutory definition regarding percentage of *ownership* appurtenant to each condominium unit (765 ILCS 605/4(e)). The result of the Appellate Court's decision is a judicial taking of the common elements from every condominium unit owner in this country.

The Appellate Court contradicts itself by stating that Padma's, " . . . property abuts the alley . . . " (App. 2), where this property can only consist of the common elements, while also insisting that Padma does not own the common elements (App. 20-21). If Padma does not own the common elements, then Padma and her property were never proper parties to this action and the City should have sued the condominium association (App. 20) instead.

The Appellate Court states that Padma, a unit owner in the condominium, has no rights or standing when a common element of her condominium is taken or damaged by the City (App. 16-22). The Appellate Court allowed the taking of private property without need, due process, or the payment of any compensation to anyone, all in violation of the Fifth and Fourteenth Amendments, on the grounds that the property involved is the common elements of a condominium.

Due Process and Equal Protection: Fourteenth Amendment

VOID FOR VAGUENESS

Due process requires that laws be specific enough to prevent arbitrary enforcement, especially when

constitutional rights, such as the right to possess and preserve property, are affected: *City of Norwood v. Horney*, 110 Ohio St 3d 353 at 378-383, 853 NE 2d 1115 at 1142-1146 (2006). An ordinance that requires a person to guess at how it will affect him, or grants an officer discretion without specific standards, is unconstitutionally vague and therefore void: *PBM Stone, Inc v. Palzer*, 251 Ill App 3d 390 at 395-396, 622 NE 2d 71 at 75 (3 Dist 1993). Unconstitutional legislation must be declared invalid, no matter how beneficial it may appear: *Best v. Taylor Machine Works*, 179 Ill 2d 367 at 378, 689 NE 2d 1057 at 1064 (1997).

Both the BLI's resolution and the Ordinance must describe property to be taken or damaged, in this case the tree, with reasonable certainty: *City of Kankakee v. Dunn*, 337 Ill 391 at 394-395, 169 NE 251 at 253 (1929); further, the Ordinance must tell property owners just what they will get for their money: *Winnetka Park District v. Brandl*, 301 Ill 265 at 268-269, 133 NE 765 at 767 (1921), *Village of Lena v. Kable*, 327 Ill 246 at 248-249, 158 NE 409 at 410 (1927). The Ordinance must prescribe the nature, character, locality, and description of the project: *Wetmore v. City of Chicago*, 206 Ill 367 at 373, 69 NE 234 at 236 (1903); *Kelly v. City of Chicago*, 193 Ill 324 at 327-328, 61 NE 1009 at 1010 (1901).

Padma pointed to unconstitutional vagueness in the Ordinance, to wit: whether the part of the alley East of the CTA railroad but West of the North branch of Noyes Court (C00089) is included in the project; what the location and extent of " . . . the South

leg . . . " (C00019, C00023, C00025; App. 48, App. 52, App. 54) are; how many trees the City intends to remove (i.e., one or 24 or another number) (C00026, App. 55), where the tree(s) are, and who owns the tree(s); whether alternatives to payment with interest exist (C00020, App. 49-50); why there is an alteration in the shape and course of the alley (C00216-Ex13 vs C00089-90) and why there are entries for removal and/or replacement of pavement, curb, bituminous surface, and sidewalk topsoil, sodding, and brick pavement (C00025-26, App. 55) when the project purports only to pave an existing gravel alley (C00018-26, App. 47-56).

The Appellate Court insists that the Ordinance is not void for vagueness (App. 22-24), but fails to answer the questions raised by Padma regarding the Ordinance. The vagueness of the Ordinance does not satisfy the Fourteenth Amendment's requirements for due process and equal protection.

STATUTORY COMPLIANCE AND JURISDICTION

The Illinois Municipal Code 65 ILCS 5/9-2-1 *et seq.* confers the power to levy special assessment taxes against real property, provided that its prerequisites are complied with. In addition to the requirements for specificity noted in the "Void for Vagueness" discussion foregoing, some of these include: notice of the BLI hearing must be sent by mail directed to the person who paid the general taxes for the preceding

year on the property (65 ILCS 5-9-2-9); if private or public property is to be taken, the BLI's resolution (65 ILCS 5/9-2-9) and the Ordinance (65 ILCS 5/9-2-10) must describe that property; that a new resolution be adopted by the BLI if anyone appears to object at the hearing, and then an Ordinance can be drafted (65 ILCS 5/9-2-10); if property is to be taken or damaged, then Sections 9-2-15 through -37 must be complied with to pray a court to ascertain just compensation (65 ILCS 5/9-2-14); the City must file a reasonably accurate description and the property index number ("PIN") of all property to be taken or damaged (65 ILCS 5/9-2-16); mandatory dismissal of the proceedings upon motion of an owner of property taken or assessed if there is no condemnation ordinance for property taken or damaged (65 ILCS 5/9-2-16); notice of the court proceeding shall be mailed stating the description of the property assessed and when Objections may be filed (65 ILCS 5/9-2-26); the City must pay interest on the compensation, accruing from the time of the taking (65 ILCS 5/9-2-36); the Assessment Roll shall include the legal description of property to be assessed (65 ILCS 5/9-2-47).

In cases where jurisdiction is conferred by statute alone, as in this case, the City's failure to fully comply with the statute's notice requirements and other conditions is jurisdictionally fatal and is not waived by any subsequent actions of a respondent: *People ex rel Goldsbery v. Zoller*, 337 Ill 362 at 369-370, 169 NE 228 at 231 (1929); *In re Plank*, 169 Ill App 3d 411 at 415, 523 NE 2d 614 at 616 (4 Dist

1988). "If the conditions prescribed by statute are not met, the court has no power to confer jurisdiction on itself by making a finding purporting to show that they were met": *Okaw Valley Outlet Drainage District v. Springman*, 345 Ill 400 at 403, 178 NE 64 at 65 (1931).

For special assessment projects, the prerequisites mandated by the statute are jurisdictional and failure of the City to comply with them renders the resulting Ordinance and assessment void: *Winnetka Park District v. Brandl*, 301 Ill 265 at 268-269, 133 NE 765 at 767 (1921), *Wetmore v. City of Chicago*, 206 Ill 367 at 373, 69 NE 234 at 236 (1903), *Clarke v. City of Chicago*, 185 Ill 354 at 362-365, 57 NE 15 at 18-19 (1900).

By allowing the City's non-compliance with the statute's requirements noted above, all of which were held jurisdictional for other citizens and therefore fatal to the City's cause of action (App. 8-16), the Appellate Court denied Padma her Fourteenth Amendment rights to due process and the equal protection of the laws.

A *prima facie* case is not evidence and cannot overcome rebutting evidence showing non-compliance with the statute: *Village of Bellwood v. Galt*, 321 Ill 504 at 508, 510, 152 NE 591 at 593, 594 (1926). When Padma introduced evidence (C00088-164, C00216) showing the City's non-compliance with the statute, the City could not rely on the *prima facie* case and was required to introduce affirmative evidence of

compliance. *Id.* The City did not do so. By insisting that the City's *prima facie* case is itself evidence and cannot be overcome by Padma's evidence (App. 9-10, App. 26-29), the Appellate Court denies Padma due process and the equal protection of the laws required by the Fourteenth Amendment.

INCORRECT IDENTIFICATION OF PROPERTY

The legal description of Padma's property, per its plat (C00161) is: "Lots 1, 2 and 3 in Block 92 in Northwestern University's Subdivision of Part of the Southwest Quarter of Section 7, Township 41 North, Range 14, East of the Third Principal Meridian, according to the plat thereof recorded February 19, 1872 as Document No. 13724, in Book One of Plats, Page 34, in Cook County, Illinois." The East-West depth of the lot is 201.0 feet (C00161).

The Appellate Court insists that the City's legal description of property, " . . . lying East of the center of Sherman Road in Evanston produced North, also a strip of land 251 feet deep East and West . . . " (C00009-10, C00160) accurately describes Padma's property (App. 14-15, App. 24-25). The maps (C00089-90) show that Padma's property is entirely West of Sherman Avenue. The plat (C00161) shows no part of Padma's property to be 251 feet deep.

" . . . Property assessed for taxes must be described so as to be capable of identification . . . and unless it is so described as to be capable of such identification the assessment and judgment will be

void . . . ," and " . . . the conveyance of the lands to appellant was by another description, and not by . . . any description contained in the delinquent list . . . " (citations omitted): *Upton v. People ex rel Murrie*, 176 Ill 632 at 633, 634, 52 NE 358 at 358, 359 (1898).

The case law requires an accurate description of property for a judgment against that property to be valid. The Fourteenth Amendment requires equal protection for Padma and her property.

INTERNAL RULES, DEPRIVATION OF CIVIL RIGHTS, AND FAILURE TO PREVENT

The City sent its rules regarding alley paving to Padma's home via US Mail (C00091), then declared that Padma cannot rely upon those rules (C00152). The City's rule requires that at least 51% of the owners of abutting property must sign a petition to initiate an alley paving project (C00091). But, the BLI initiated the project by resolution on 11 September 2006 (C00003, App. 57), which is *before* receipt of the petition on 11 October 2006 per the date-stamp (C00107-111).

According to CCRD, some of the petition signers did not own the affected property signed for (C00098-102, C00109, C00111). There were two separate signatures for some properties (C00109-111), and one entry is a printed name rather than a signature (C00110). When the invalid signatures are excluded and the duplicates are counted only once, then no more than 39 of the 79 property owners, or less than 50%, signed

the petition (C00107-111). Therefore, the petition was never sufficient to initiate the project pursuant to the City's own published rules.

Since the petition for the project lacked enough valid signatures, the City cannot attempt to cure the defect after having already proceeded because to do so cuts off Padma's intervening rights: *Merritt v. City of Kewanee*, 175 Ill 537 at 542-552, 51 NE 867 at 868-872 (1898). Further, " . . . It is well said that an act, which is void at the time it is done, cannot be ratified. Even the legislature cannot impart life to a void proceeding. . . ." *Merritt v. City of Kewanee*, 175 Ill 537 at 552, 51 NE 867 at 872 (1898).

The Appellate Court states that the Corinthian board gave permission to the City to kill the tree (App. 20-21). However, this permission was not given until 27 April 2007 (C00157), which is *after* the City filed the Ordinance including "tree removal" (C00026, App. 55) in the Circuit Court on 19 April 2007 (C00018, App. 47), *after* the City approved the Ordinance on 03 April 2007 (C00021, App. 52), and *after* the City adopted the Ordinance on 26 March 2007 (C00021, App. 52). By the time permission was given, it no longer could be either given or withheld because the City had already proceeded to petition the Circuit Court for the "tree removal" (C00026, App. 55). The City did not even name the Corinthian as a party to the proceeding in the Circuit Court, so it is unclear what impact, if any, a lack of permission would have had.

The 2300 Sherman Ave. Condominium Association used its assets and management company to advance the project (C00115-118, C00120). The Corinthian intimidated owners to sign the petition for the project and harassed Padma when she did not agree (C00122-124, C00127-131, C00133). But, neither the Condominium Property Act 765 ILCS 605/1 *et seq.* nor the General Not For Profit Corporation Act of 1986 805 ILCS 105/101.01 *et seq.* permit a condominium association to use its power and resources to campaign for a City project or tax. A corporation has only the powers specifically granted by statute and none beyond those: *Pond v. Royal League*, 127 Ill App 476 at 482-483 (1 Dist 1906).

Padma repeatedly informed the City of the inappropriate actions of the associations (C00061-64, C00095, C00134-135, C00140). The City denied knowledge (C00092), but did nothing to stop the continuing acts. Thus, both condominium associations exceeded their legal authority by using their power and assets to violate Padma's rights and impose the City's project and tax, all with the City's knowledge and approval.

By allowing the conduct noted above, the City did not give Padma the full and equal benefit of all laws required by 42 USC §1981. Padma submits that this case affects her right to hold property in two regards: one relates to the tax being a judgment against her property, and the second relates to the City's taking of the tree. Therefore, Padma's right to hold real property pursuant to 42 USC §1982 is implicated. The

conduct of the condominium associations and City deprived Padma of Constitutional and legal rights: the free exercise of religion by forcing her to fund the needless killing of a tree; and to hold specific property, namely the tree. This deprivation of Constitutional and legal rights is a violation of 42 USC §1983. The collusion by the condominium associations to deprive Padma of her property rights in the tree and of her religious rights is a violation of 42 USC §1985, while the City's failure to prevent these acts is a violation of 42 USC §1986. The City is therefore liable to Padma for damages pursuant to 42 USC §1988.

The Appellate Court states that Padma must demonstrate racial or class-based animus as a basis for the actions of the condominium associations and City to deprive Padma of civil rights (App. 30-31). However, " . . . Conspiracies by their very nature do not permit plaintiffs to allege all the details of the defendants' conduct. Such actions are often purposefully shrouded in mystery. . . ." *People ex rel Scott v. College Hills Corporation*, 91 Ill 2d 138 at 145-146, 435 NE 2d 463 at 467 (1982). There are various potential motivations for animus. But, it makes no practical difference whether Padma is discriminated against because she is Hindu, an ethnic minority, female, principled, or something she has yet to think of. Whatever the reason for the animus, the result is the same: a concert in action to deprive Padma of Constitutional and civil rights.

DISPARATE TAXATION OF PUBLIC AND PRIVATE PROPERTY

The Special Assessment Benefiting State Property Law 35 ILCS 200/29-5 provides that: " . . . when any unit of local government makes a local improvement by special assessment or special tax which benefits abutting State property, the State should pay for the benefit so conferred on the same basis as other property owners. . . ." The Illinois Municipal Code 65 ILCS 5/9-2-15, 16, 18, 22, 44, 45, 48 requires that public property be assessed on the same basis as private property.

Padma's Objection includes the argument that property belonging to the HACC was being improperly taxed by the City on a different basis than the private properties (C00057). Padma's Exhibits in support of this contention are in the Record (C00089-90, C00103-106, C00216-Ex11). Yet, the Appellate Court states that the argument " . . . was never presented . . . to the trial court . . . " (App. 31).

The Fourteenth Amendment requires due process and equal protection for all citizens. Padma properly objected in the Circuit Court to a lack of equal protection for her and her property relative to the HACC's property (C00057, C00089-90, C00103-106, C00216-Ex11). The Appellate Court deprived Padma of due process by ignoring this properly raised defense.

STANDING REGARDING PUBLIC PROPERTY

The Illinois Municipal Code 65 ILCS 5/9-2-16 states that the City's entire proceeding shall be dismissed if there is no condemnation ordinance for (private or public) property to be taken or damaged, upon motion of anyone whose property is to be taken or assessed.

When a City seeks to condemn public property, here the HACC's property, for a local improvement, any tax-payer has standing to object because the property is effectively held in trust for the benefit of the tax-payers by the public entity, therefore the tax-payers have standing to object whether or not the public entity does so: *City of Moline v. Greene*, 252 Ill 475 at 479-481, 96 NE 911 at 913-914 (1911).

Despite the statute and prior case law, the Appellate Court states that Padma lacks standing to object to the taking or damaging of the HACC's property (App. 18), thereby depriving Padma of her Fourteenth Amendment rights to due process and the equal protection of the laws.

PROCEDURAL DUE PROCESS

" . . . A procedural due process claim . . . is not rooted in the notions of adequate compensation and economic restitution but is based on something more – an expectation that the system is fair and has provided an adequate forum for the aggrieved to air

his grievance. . . ." *Weinberg v. Whatcom County*, 241 F.3d 746 at 752 (9 Cir 2001).

The Supreme Court of Illinois held that in cases proceeding under the Illinois Municipal Code, " . . . It is the plain intent of the law that legal objections shall be heard separate and apart from the questions as to the amount of benefits and proportionate share of the assessment . . . " *Doran v. City of Murphysboro*, 225 Ill 514 at 519, 80 NE 323 at 325 (1907). By this ruling, separate hearings for the legal and benefit objections are effectively a matter of procedural due process. However, the Appellate Court's Order excused the lack of separate hearings for Padma (App. 31), thereby denying Padma the equal protection of the laws guaranteed by the Fourteenth Amendment.

NUMEROUS MISAPPREHENSIONS OF FACT

The Appellate Court's Order (App. 1-32) contains several misapprehensions of fact, some of which are listed here along with citations to the correct facts in the Record:

(a) The Appellate Court's Order states: " . . . the new dimensions of the alley [are] . . . 12 feet by 14 feet . . . " (App.11). But, maps, plats, and surveys (Appeal Appendix C00089, C00155, C00216-Ex11) show that the alley occupies a much greater area.

(b) The Appellate Court's Order states: " . . . a map printed from the City's website . . .

does not specifically state that her [Padma's] property lies west of Sherman Avenue . . . " (App. 25). Both maps (C00089-90) identify: Sherman Avenue, Padma's address at 2246 Sherman Avenue, and the directions North, South, East, and West. The maps (C00089-90) clearly show that Padma's property is West of Sherman Avenue.

(c) The Appellate Court's Order states that all properties involved are condominium units within a single condominium association (App. 2-4, App. 29). But, the Assessment Roll (C00007-12) and maps (C00089-90) show that the properties consist of: six (6) single-family homes with PINs 11-07-115-001-0000 through 11-07-115-006-0000 (C00007), a recently-converted condominium still under developer control at the time with PIN 11-07-115-012-0000 (C00007), a two-flat with PIN 11-07-115-013-0000 (C00008), the 2300 Sherman Ave Condominium with PINs 11-07-115-023-1001 through 11-07-115-023-1022 (C00008-9, C00115), and the Corinthian (includes Padma's unit) with PINs 11-07-115-024-1001 through 11-07-115-024-1033 (C00009-12).

(d) The Appellate Court's Order states: " . . . other portions of the condominium association . . . [consist of] multiple buildings . . . " (App. 14). But, maps (C00089-90) and the plat of survey (C00161) clearly show that Padma's condominium association consists of only one (1) courtyard-style building.

(e) The Appellate Court's Order states: " . . . the board of the Corinthian Condominium Association [Padma's condominium] . . . approached the City about a petition to commence the project; the board circulated the petition . . . " (App. 2). But, a completely different condominium, the "2300 Sherman Ave. Condominium Association" (C00115), instituted the project (C00115-117, C00129) and filed the petition (C00107-111) with the City.

(f) The Appellate Court's Order states an incorrect chronology of events in this case (App. 2-4, App. 10-14, App. 17-18, App. 21). The events in this case occurred in the following sequence: (1) the BLI originated the plan (C00003, App. 57), (2) a petition was received by the City (C00107-111), (3) the BLI passed its Adhering Resolution (C00004, App. 59), (4) the Ordinance was drafted (C00019, App. 48), (5) the BLI's public hearing was held (C00003, App. 57, C00113), (6) the Ordinance was adopted and later approved (C00021, App. 51), (7) the City filed a Petition in court against the affected properties including Padma's (C00002), and (8) Johnson claims that the condominium board approved removal of the tree (C00157).

(g) The Appellate Court's Order states: " . . . the BLI . . . included the mayor . . . " (App. 30). According to the minutes for a City Council meeting on 26 March 2007 (C00153), the mayor's name is " . . . Mayor Lorraine H. Morton . . . " According to the minutes for the

BLI meeting of 12 February 2007 (C00118), the BLI members present were: Jennings, Burke, Grady, Nagar, Purze, Stoneback, and Eggleston, with no members absent. The BLI does not and did not include the mayor.

(h) The Appellate Court's Order alleges that the tree in question is old (App. 3, App. 21). Nothing in the Record states that the tree is old. The City's Arborist told Padma that the tree is only about 30 to 40 years old (C00069, C00137), and this statement was never challenged by the City at trial or on appeal.

(i) The Appellate Court's Order (App. 7, App. 21) states that Padma brought this suit or sued the City. But, the City brought this suit by filing a Petition (C00002) in the trial court against Padma and her property (C00010). The caption for the Appellate Court's Order (App. 1) identifies Padma as party "Defendant-Appellant" and the City as "Plaintiff-Appellee."

(j) The Appellate Court's Order (App. 14-15) suggests that properties East of Sherman Avenue are also affected by the project. But, the project is bounded on the East by Sherman Avenue (C00002, C00003, C00017, C00019, C00025), so only properties West of Sherman Avenue can abut it.

(k) The Appellate Court's Order (App. 17) states that Padma: " . . . admits she received a letter . . . from the BLI and the City on December 21, 2006. . . ." But, while the letter

(C00113) bears that date, Padma never stated when it was received.

(l) The Appellate Court's Order (App. 18) states: " . . . BLI and City staff . . . came to her [Padma's] home. . . ." But, the meeting referred to was in the alley with other affected property owners (C00141), and it was those other property owners who informed Padma and invited her to the meeting, not the City or BLI.

(m) The Appellate Court's Order (App. 18) states that Padma filed " . . . at length . . . " at trial. But, Padma filed only one Objection (C00051-84) and its supporting Exhibits (C00085-164; C00216-Ex11, 13, 15), and only one Motion for Reconsideration (C00187-191) and its supporting Affidavit (App. 60-62, C000208-210).

(n) The Appellate Court's Order (App. 21) states that Johnson obtained " . . . the City's promise that it [the City] would pay this [tree removal] expense. . . ." But, the Ordinance (App. 55, C00026) taxes the "tree removal" expense to the property owners, including Padma, and not exclusively to the City.

(o) The Appellate Court's Order (App. 28) refers to " . . . how much she [Padma] chooses to use the alley . . . " But, because traffic on the alley and Padma's condominium is one-way (C00089-90, C00092-93, C00216-Ex11), Padma is legally permitted to use only a small fraction of the alley. Padma submits

that compliance with traffic laws is mandatory.

(p) The Appellate Court's Order states that evidence filed by Padma with her Objection at trial, specifically Objection Exhibit 15, is " . . . suspect . . . " (App. 15). But, the trial court ordered that Padma's Objection Exhibits 11 [C00216-Ex11] and 15 [C00216-Ex15] be included in the Record on Appeal because both Exhibits were filed at trial despite lacking a file-stamp, concluding: "This ministerial error is corrected by this order nunc pro tunc" (Order entered on 16 January 2008).

The Appellate Court's Order (App. 1-32) is an adjudication based upon numerous incorrect facts, in essence a completely different case. Such an adjudication does not satisfy the Fourteenth Amendment's requirements for due process and the equal protection of the laws.

CONCLUSION

By granting this Petition, this Court will decide inherently important Constitutional issues regarding religious rights, property rights, due process, and the equal protection of the laws. This Court's decision will determine whether condominium unit owners in this country lose property, or whether they enjoy Constitutional protection of their property rights. This Court's will also determine whether the Constitution permits

the government to force a citizen to choose between following her religious precepts and losing her home, or keeping her home by violating her religious tenets, where no compelling governmental interest is at stake.

Respectfully submitted,

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FIFTH DIVISION
June 26, 2009

No. 1-07-2650

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITY OF EVANSTON, Plaintiff-Appellee, v. PADMA RAO, Defendant-Appellant.	) Appeal from the Circuit Court of Cook County.) No. 07 COSA 3) The Honorable Susan Fox Gillis, Judge Presiding.

ORDER

Plaintiff-appellee City of Evanston (City) adopted an ordinance and special assessment to pave an alley that crossed through property located at a condominium association. Defendant-appellant Padma Rao (Rao), a resident of the association, filed objections with the trial court; the court denied these and entered an order confirming the special assessment. Rao then filed a motion for reconsideration, which the court also denied. Rao appeals from both orders, *pro se*, asserting multiple contentions of wrongdoing against the City and the trial court. She asks for myriad forms of relief including but not limited to attorney fees, costs to garage her car, treble damages, interest, arborists fees, a permanent injunction, and restoration of the alley to its original gravel condition. For the following reasons, we affirm.

BACKGROUND

In 2005, the board of the Corinthian Condominium Association in Evanston began discussing plans to pave an existing gravel alley located on its property. The board approached the City about a petition to commence the project; the board circulated the petition to all 79 of the condominium owners whose property abutted the alley and received 41 signatures, or a 51.8% majority, in support of the project. In response, the City's Board of Local Improvements (BLI) adopted a special assessment regarding the project, describing the improvement as follows:

> "That the unimproved public alley in the block bounded by Colfax Street on the north, Noyes Street on the south, CTA Railroad on the west, and Sherman Avenue on the east, in the City of Evanston, be improved by excavating, constructing the necessary drainage system and paving with 8" Portland Cement Concrete Pavement to a width of twelve feet (12') and the South leg to a width of fourteen feet (14')."

Rao, who owns condominium Unit 3 at 2246 Sherman Avenue in the association and whose property abuts the alley, received notification from the City that a hearing would be held on January 10, 2007 open to the public about the project. Rao attended the meeting and presented her objections to the project both orally during the meeting and in a letter she gave to the BLI. These objections included

that: her land does not abut the alley; the condominium board exerted pressure and misrepresentations on its unit owners to have them sign the petition; the petition itself had irregularities; she would not benefit from the project; and a paved alley would bring dangers and inconveniences, including the unnecessary destruction of a particular tree on her property. In response, BLI President David Jennings sent Rao a letter in March 2007, addressing each of her concerns. He described that the majority of the condominium owners supported the project, her property unquestionably abutted the proposed site, and the BLI and City had cross-checked each of the signatures on the petition to verify them and had found no wrongdoing. Jennings further explained how the costs were assessed, and he specifically discussed Rao's comments about safety, parking and tree removal, noting that because the tree straddled both the City and the condominium association's property, the BLI would seek the condominium board's recommendation about whether to remove it or to simply box it in. In addition, members of the City's public works department and the superintendent of parks and forestry met with Rao at the proposed site and showed her how the project would be handled and discussed the age and poor condition of the tree as it currently stood.

Ultimately, the BLI voted to recommend the project to the City and adopted a resolution adhering to the special assessment and proposing Ordinance 3-O-07. In April 2007, Mary Johnson, the president of

the condominium board, sent the City a letter stating that the board unanimously agreed that the tree in question should be cut and removed for the project. The City, in turn, adopted the ordinance, filed the assessment roll, and petitioned the trial court to levy the special assessment in accordance with the ordinance. The total cost of the project was $155,406.76. Because a portion of the alley was located on property owned by the Housing Authority of Cook County, the City elected to pay a percentage. After the remaining costs were apportioned, the assessment roll demonstrated that each of the condominium owners, including Rao, would be equally assessed $635.02 for the project, which they could pay in a lump sum or in 10 annual installments.

Rao filed objections in the trial court to the City's petition. Among a multitude of contentions similar to those she had raised before (including traffic problems, functionality, unnecessary tree removal, care and maintenance, etc.), she principally alleged four main categories of wrongdoing by the City: that the special assessment was an unfair and arbitrary imposition, that she had been deprived of her right to due process, that she had been deprived of her right to property without receiving just compensation, and that the ordinance was excessively vague. After examining the City's petition and Rao's objections, the trial court entered an order on June 26, 2007 in favor of the City and confirming the special assessment. Specifically, the court stated that it found "the legal and benefit objections as filed" by Rao to be "not

sustained" and that "the City ha[d] met its burden as to the benefit on [the] subject properties." The court therefore ordered the City to proceed with construction of the project.

In July 2007, Rao filed a motion to reconsider the trial court's order. Rao's motion focused exclusively on her allegations regarding the tree's removal. She asserted that the tree was being unlawfully removed without the commencement of an eminent domain action and asked the court to address the issue directly, reconsider it and "spare the tree." The trial court reserved a hearing date of August 24, 2007 for this motion. On that date, Rao filed an "affidavit" with the court, wherein she described that her Hindu religion instills a reverence for trees and that the City, by adopting removal of the tree and instituting the special assessment, had violated her freedom to practice that religion. On August 24, 2007, the court issued an order denying Rao's motion for reconsideration and allowing the project to proceed as scheduled. The project did proceed, the tree was removed (leaving a stump), and the alley was paved.

ANALYSIS

We begin with a threshold issue raised by the City. In its brief on appeal, the City, with a footnote citation to *Wheatley v. Board of Education of Township High School District 205*, 99 Ill. 2d 481 (1984), and *Yu v. International Business Machines Corp.*, 314 Ill. App. 3d 892 (2000), cursorily argues that because

it offered Rao the full amount of the assessment as full and complete settlement of this cause, and because Rao subsequently rejected this, this appeal must be dismissed as moot since there is no remaining case or controversy. This is incorrect.

First, while the City has appended its brief on appeal with a September 25, 2008 letter from it to Rao offering to pay her $635.02 in exchange for full settlement and final resolution of her claim, and with a September 29, 2008 response letter from Rao rejecting this, we note that neither of these were made part of the record on appeal. As such, we may not consider them. See *MJ Ontario, Inc. v. Daley*, 371 Ill. App. 3d 140, 150 (2007) (documents not in record cannot be reviewed by appellate court). Second, as Rao notes, the City's offer of settlement came long after the orders of the trial court, Rao's notice of appeal, and the filing of her appellant's brief in this cause. Thus, this issue of settlement, which could have been brought earlier in these legal proceedings, was never raised before the trial court and, thus, it is waived for our review. See *MJ Ontario, Inc.*, 371 Ill. App. 3d at 151.

Finally, even if these letters had properly been included in the record and the issue were not waived, there is no legal support for the City's insistence that we must dismiss the appeal pursuant to its offer to Rao. The cases the City cites, namely, *Wheatley* and *Yu*, deal with class action lawsuits; in that context, there is a general rule that if the named plaintiff is offered the relief requested before the class is

certified, the underlying cause of action is mooted since there is no longer any actual controversy pending. See *Kostecki v. Dominick's Finer Foods, Inc.*, 361 Ill. App. 3d 362, 376-77 (2005). However, this rule is particular to the class action context, where the party bringing the suit is not fighting on her own behalf but, rather, on that of a class of potential plaintiffs, and thereby owes them a special duty as their representative to act in their best interest when it comes to settlement negotiations. See, *e.g.*, *Gelb v. Air Con Refrigeration & Heating, Inc.*, 356 Ill. App. 3d 686, 700 (2005) (for example, named plaintiff is prohibited from perpetuating controversy by rejecting tender as this may not be in best interest of class). The instant cause did not proceed in the class action context. That is, Rao never brought this suit on behalf of anyone other than herself. When the trial court issued its final orders disposing of this cause, Rao had the undeniable right to appeal these decisions in an effort to obtain the relief she sought which, according to her, encompasses more than the monetary amount of the assessment offered by the City as a settlement. See, *e.g.*, *Hartzell v. Hungate*, 223 Ill. App. 346 (1921) (appellant has right to appeal final order); *Chas. Ind Co. v. Cecil B. Wood, Inc.*, 56 Ill. App. 2d 30 (1965) (our law contemplates broad appeal rights; one able to proceed on appeal is a party or one privy to record, one injured by judgment or one who will benefit from reversal). Whether proceeding with this appeal is legally or fiscally wise on her part is not the issue. Ultimately, contrary to the City's contention, Rao's right to appeal was not foreclosed by its settlement

offer to her (which she rejected), and we will not dismiss her appeal on this ground.

Having so concluded, we now turn to the merits of Rao's claims. Rao's *pro se* appellant's brief asserts 10 issues on appeal. In our discussion that follows, we will address each of these, albeit not in precisely the same order which Rao employed when presenting them before our court. For the sake of completeness, we will refer to Rao's contentions as 1 through 10 as we issue our holdings accordingly.

A. Ordinance Procedures (Rao's contention #1)

Rao's first contention on appeal is that the City violated "the prerequisites of 65 ILCS 5/9-2-1 *et seq.* and that this deficiency deprive[d] the trial court of jurisdiction" in this matter. Rao cites several subsections of section 9-2 of the Illinois Municipal Code (Code) (65 ILCS 5/9-2-1 *et seq.* (West 2006)) dealing with local improvements and asserts that the City violated the law because its resolution and ordinance did not comply with these. Principally, Rao refers to the City's alleged noncompliance with sections 9-2-9, 10, 26, and 47.[1] We find no such noncompliance and, thus, no support for Rao's contention.

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[1] Rao also briefly cites, but does not fully argue, alleged violations of subsections 16 and 36. Our discussion that follows sufficiently address these points.

Section 9-2 of the Code, along with its numerous subsections, outlines local improvement procedures municipalities, as the City here, must obey when enacting special assessments and ordinances for improvements. See 65 ILCS 5/9-2-1 *et seq.* (West 2006). When a municipality has presented, in its petition seeking confirmation of a special assessment to pay for costs for a local improvement, a copy of the assessment roll, a certified copy of the ordinance, and the recommendation and monetary estimate of the board of local improvements, the municipality has established a *prima facie* case for confirmation of its petition. See *In re Village of Hinsdale, Cook and DuPage Counties*, 23 Ill. App. 3d 357, 361 (1974); see also 65 ILCS 5/9-2-11 (West 2006); see, *e.g.*, *Village of Bloomingdale v. LaSalle Nat'l Bank*, 69 Ill. App. 3d 218 (1979); *Village of Homewood v. Grannis*, 265 Ill. 135 (1914) (this shows that all preliminary requirements have been complied with). At that point, the burden shifts to the objector to overcome this *prima facie* case and show the municipality's noncompliance. See *Village of Hinsdale*, 23 Ill. App. 3d at 361; *Village of Homewood*, 265 Ill. at 137.

In the instant cause, the record is clear that the City, when it presented its petition to the trial court to confirm the special assessment to pave the alley, attached to this, along with various other documents, the assessment roll detailing the cost to each unit owner (including Rao), a certified copy of Ordinance 3-O-07, and the recommendation of the BLI, as well as the estimate of the project's costs prepared and

signed by the BLI's senior engineer. Accordingly, then, the City established a *prima facie* case for the confirmation of its petition.

To meet her burden, Rao alleges that the City did not comply with certain requirements of the Code, which we noted above. Her allegations as to each of these statutory subsections fail as we note that the City was indeed in compliance with each subsection's requirements.

First, as to section 9-2-9, the BLI adopted a resolution on the project on December 12, 2006 – a resolution that clearly described the improvement, set a time for a public hearing on January 10, 2007 (not less than 10 days after the adoption), and included the estimate as signed by its senior engineer detailing the costs of each part of the project. In addition, pursuant to this section, the BLI and City mailed a notice of the public hearing to all the unit owners on December 21, 2006, well before the statutory requirement of doing so five days before the hearing, outlining the subject of the resolution, the estimate of cost and the day and time of the hearing. Though Rao points out that the notice she received was address to "Mary Otness," she nonetheless admits she received the notice, as it was properly address to her home (2246 Sherman Avenue, Unit 3), thereby waiving any issues concerning this part of the subsection. See, *e.g.*, *Witter v. Hicks*, 338 Ill. App. 3d 751, 759 (2003) (party had sufficient notice of hearing when he had opportunity to attend, contest decision, and make arguments).

Next, section 9-2-10 requires the City to actually hold the public hearing it schedules pursuant to section 9-2-9. The City here did this on January 10, 2007; Rao attended and spoke at the meeting, presenting her objections to the project both orally and in a written letter she gave to the BLI. Rao contends that the City violated this section in two ways: that the ordinance did not properly "prescribe the nature, character, locality, and description of the improvement," and that the BLI was required to adopt a new resolution abandoning it original resolution because she appeared at the hearing and objected to the project. Rao is incorrect on both grounds. Regarding the ordinance itself, an examination of its language, in our view, demonstrates that it sufficiently complies with the requirement of prescribing the "nature, character, locality, and description" of the project. That is, the ordinance clearly describes that "the unimproved alley in the block bounded by Colfax Street on the north, Noyes Street on the south, CTA Railroad on the west, and Sherman Avenue on the east, in the City of Evanston" is the subject of the improvement, *i.e.*, a new paved alley. The ordinance further describes the new dimensions of the alley (12 feet by 14 feet) and the material to be used (8-inch "Portland Cement Concrete Pavement"), and incorporates by specific reference in section 2 the BLI's recommendation and its Estimate of Cost, which further describe the project. Contrary to Rao's assertion that the "City did not make the basis for its cost estimate clear," this estimate includes some 29 items, from excavation to payment removal to inspection, and their detailed

costs, along with engineering services and other expenses, for a total of $155,406.76.

Moreover, regarding Rao's assertion that the City was required, pursuant to section 9-2-10, to abandon the BLI's resolution and adopt a new one because she appeared at the hearing and issued objections, we find that her conclusion is completely misplaced. Section 9-2-10 states that if anyone objects to the proposed improvement, the board of local improvements:

> "shall adopt a new resolution abandoning the proposed scheme or adhering thereto, or changing, altering, or modifying the extent, nature, kind, character, and estimated cost * * * without a further public hearing thereon, as it considers most desirable. Thereupon, if the proposed improvement is not abandoned, the board shall have an ordinance prepared therefor, to be submitted to the corporate authorities." 65 ILCS 5/9-2-10 (West 2006).

Clearly, Rao has misread this statute and her argument here is based solely on this confusion. Though she stresses that portion which describes that, upon an objection from the public, the board of local improvements "shall adopt a new resolution abandoning" the project, she neglects the remaining portion which states that the board can just as well adopt a new resolution "adhering" to the original project. 65 ILCS 5/9-2-10 (West 2006). In fact, the statute further describes that the choice of abandoning or adhering to

(or changing, altering, etc.) the resolution belongs to the board, and that the board does not even have to hold any further public hearings regarding its decision. See 65 ILCS 5/9-2-10 (West 2006). Once the board makes its choice and adopts a resolution expressing that choice, it is to prepare an ordinance and submit it to the City. 65 ILCS 5/9-2-10 (West 2006). This is a far cry from Rao's insistence that section 9-2-10 required the BLI to abandon its original resolution based on her objection.

The BLI and the City here followed the requirements of section 9-2-10. The BLI adopted its original resolution, held a public hearing, and, after hearing Rao's objections and choosing to adhere to the project as proposed, prepared an adhering resolution and submitted it to the City for a proposed ordinance. Rao argues that the BLI and the City improperly intended never to consider any objections, since the resolution was adopted on December 12, 2006, but the hearing at which she objected did not occur until January 10, 2007. Rao misinterprets the timeline of events in this cause. The original resolution was proposed by the BLI for its review in September 2006; it was not signed and adopted by the BLI until December 12, 2006. The City then proposed an ordinance on January 2, 2007 based on the BLI's recommendation, but this was not approved and signed until April 3, 2007, long after the January 10, 2007 meeting took place. Moreover, while the required final paperwork to be filed in the trial court (including the assessment roll, the petition for assessment, the cost estimate, the

ordinance, etc.) was compiled throughout this process, none of it was filed until April 19, 2007, again, long after the public hearing date, as well as after the multiple opportunities Rao undertook to express her objections.

Rao's remaining assertions regarding her contention that the City did not follow section 9-2's procedures are brief, but mention subsections 26 and 47. Section 9-2-26 describes what must be included in the notice mailed to those who have been assessed for a local improvement; this includes a "description of that taxpayer's property." 65 ILCS 5/9-2-26 (West 2006). Rao claims that the City violated this section when it "incorrectly" described her property as "lying East of Sherman Road," when in fact her property lies west of Sherman Avenue. However, as the record clearly denotes, this project covered considerably more area than simply Rao's own condominium unit. As exhibited by the assessment roll, not only other portions of the condominium association (*i.e.*, multiple buildings), but other properties in the city (including property owned by the Housing Authority of Cook County) were affected by the project. Accordingly, the notice pursuant to this section specifically addressed to, and received by, Rao had two property descriptions. The first, appearing at the top of the notice, describes the improvement in general and mentions property bounded by "Sherman Avenue on the East." However, in the middle of the notice is a paragraph which states: "*Your property* is assessed therein as follows," and includes Rao's property identification

number, or PIN, and an assessment amount of $635.02. What appears immediately next is the second property description, which states a "strip of land 251 feet deep east and west, *lying west of and adjoining* the north half of the above description" (emphasis added) at the top of the page, indicating her property west of Sherman Avenue.

Finally, section 9-2-47 states what the City needs to include in the assessment roll, that it must attach an affidavit of compliance from the officer making the roll, and notes the punishment for any perjury in this regard. See 65 ILCS 5/9-2-47 (West 2006). Rao claims that the City violated the law because, again, the roll incorrectly described her property as "lying East of the center of Sherman Road" instead of west, and because the "original assessment roll" lists "Mary Otness" as the owner of 2246 Sherman Avenue, Unit 3, instead of Rao. However, the assessment roll Rao cites to in the record as proof of this is suspect; while it has the name "Mary Otness" listed as the owner of Rao's property, this document is part of an attachment to some (presumably) trial court exhibit which Rao does not describe. It is also incomplete; that is, Rao includes only one page of this roll (labeled "page 4 of 5"), it is not dated or file stamped, it does not contain any property description let alone the one she quotes in her brief, and a yellow note is attached at the top with the hand-written phrase "original assessment roll." Contrary to this, the record contains the official assessment roll filed by the City in the trial

court. This roll, dated April 17, 2007, attached to its petition and filed stamped April 19, 2006, contains all six of six pages, descriptions of the various areas of property that will be affected by the project divided by their location, and indeed lists Rao (and no one else) as the owner of 2246 Sherman Avenue, Unit 3. Moreover, Rao's name and PIN appear exactly in the category of those properties lying west of Sherman Avenue to be affected by the project. This evidence is clearly contrary to her claims.

Therefore, there is no merit to any of Rao's statutory assertions here. Rather, upon our review of the record in comparison with the pertinent sections of section 9-2 of the Code, we find that the City complied with all applicable special assessment and ordinance procedures relevant to this cause.

B. Due Process (Rao's contentions #2, 4, and 7)

Similar to her assertions above, Rao next contends that the City violated her due process rights. At this point, her focus turns to the tree at the center of this cause, which the City removed pursuant to the association board's approval in order to complete the project. She claims that, as the tree was principally on her property and as she thereby owned it, the trial court erred in denying her motion to dismiss because the City was required to institute a condemnation proceeding against her but did not. She likewise claims that the City illegally destroyed her tree and seeks damages as high as $142,800 plus interest

and/or the costs of arborists to spontaneously rejuvenate the tree, the restoration of the gravel alley, and expenses she is incurring for her moral inability to garage her car in the condominium's underground parking. She finally asserts that the City killed the tree in violation of the Wrongful Tree Cutting Act (740 ILCS 185/1 *et seq.* (West 2006)) and the Religious Freedom Restoration Act (775 ILCS 35/1 *et seq.* (West 2006)). We reject Rao's claims.

The fundamental requirements of due process are notice reasonably calculated to apprise the interested party of the proceedings, and the opportunity to present any objections in a meaningful time and in a meaningful manner. See *Tri-G Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244 (2006). This is a flexible concept and formality is not required; due process is met if there is reasonable assurance that notice will actually be given and the person affected will have a reasonable time in which to appear. See *Lyons v. Department of Children & Family Services*, 209 Ill. 2d 264, 272 (2004); *Stratton v. Wenona Community Unit Dist. No. 1*, 133 Ill. 2d 413, 432-33 (1990).

Based on the record presented before us, we find that Rao unquestionably received due process throughout this matter. Rao admits she received a letter of notice regarding the project and its details from the BLI and the City on December 21, 2006, informing her that a public hearing would be held January 10, 2007. Rao exercised her right to be heard at several points, including at that January 10, 2007 hearing, in a letter she presented to the BLI outlining her

objections to the project, at a subsequent BLI meeting in February 2007, and at a personal meeting she had with BLI and City staff who came to her home in March 2007 to discuss the construction site and the tree. In addition, Rao had ample opportunity to file objections with the trial court to the City's petition on the project, which she did at length, and she also appeared in court to contest the project. Accordingly, we find no merit to her conclusions that she did not receive due process in this cause.

Turning now to her more specific claims regarding the tree, we note that Rao asserts the tree belonged to her, was on her private property and, therefore, the City was required to file a petition for condemnation because it knew it would be taking and damaging her property.[2] Rao goes on to argue that she is entitled to just compensation under eminent domain principles, as well as the condemnation concept, because the City took her tree unlawfully for public use. She claims that the City "mocked" her, "hid its taking and destruction of [her] tree" and "invented a scheme" to deprive her of her property without any good faith negotiations.

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[2] We note that Rao attaches to this argument a contention that the City was also taking and damaging property belonging to the Housing Authority of Cook County. This claim is wholly misplaced; this property does not belong to Rao or her condominium unit, nor does she live on this property. Accordingly, she has no standing to argue this point.

First and foremost, Rao's assertion that the City admitted the tree was on private property is incorrect. The City never did this; in fact, evidence in the record shows that the City consistently maintained that the tree straddled both public property and property belonging to the condominium association, never that any of the property on which the tree sat belonged privately to Rao.

Next, regarding her assertions about the lack of condemnation and eminent domain proceedings, we note that, pursuant to the Condominium Property Act (Condo Act), the administration and operation of the condominium are vested in the condominium association through its board. See 765 ILCS 605/18.3 (West 2006); *Board of Directors of 175 East Delaware Place Homeowners Association v. Hinojosa*, 287 Ill. App. 3d 886, 889 (1997); accord *Robinson v. LaCasa Grande Condominium Association*, 204 Ill. App. 3d 853, 856 (1990) (condominium association is responsible for overall administration of condominium property via its board). The board is charged with the operation, care, upkeep, maintenance, replacement and improvement of the condominium's common elements. See 765 ILCS 605/18.4(a) (West 2006); *Robinson*, 204 Ill. App. 3d at 857; accord *Hinojosa*, 287 Ill. App. 3d at 889 (the day-to-day operations of condominium complex are managed by board rules and regulations). Consequently, the board has the authority to adopt and amend rules and regulations concerning the details of the operation and the use of property common to the condominium complex. See *Robinson*, 204 Ill. App. 3d

at 857; see, *e.g.*, *Poulet v. H.F.O., L.L.C.*, 353 Ill. App. 3d 82 (2004) (condominium association's primary responsibility is to protect association interests and has right to act on behalf of all unit owners; allowing individual owners to attempt to assert individual rights deprives association of these rights given it by Condo Act). The board's powers are generally broad. See *Hinojosa*, 287 Ill. App. 3d at 890-91 (the "board shall exercise for the association all powers, duties, and authority vested in the association by law").

The institution of eminent domain or condemnation proceedings first requires that a taking occurred. See *Department of Natural Resources v. Brauer*, 339 Ill. App. 3d 723, 728 (2003); *Kleinschmidt, Inc. v. County of Cook*, 287 Ill. App. 3d 312, 317 (1997). In the instant cause, pursuant to the law just discussed, the City did not commit a taking, unjustified or not, against Rao when it removed the tree at issue. This is precisely because, as the tree was located (partly) in the common area of the condominium complex, it was the association, not Rao, who owned the tree. Therefore, the association, through its board, was the entity responsible for the tree. Pursuant to the Condo Act, the board had the power and responsibility to remove the tree, and it conferred this authority to the City when board president Johnson gave the City the board's written permission to remove the tree. The City, then, did not unlawfully "take" Rao's private tree for public use; it received the permission of the true owner, *i.e.*, the board, to remove it.

Moreover, Rao's claim that no negotiations were had regarding the tree's removal is obviously incorrect. It is clear from the record that negotiations were had -- between the City and the association board. See, *e.g.*, *IDOT v. 151 Interstate Road Corp.*, 209 Ill. 2d 471, 480 (2004) (negotiations are required before condemnation proceedings can be had). BLI president Jennings informed Rao that it would seek the board's permission to remove the tree. City staff from its public works and forestry departments examined the tree and submitted their conclusion that the tree was old and in poor condition. And, after assessing the cost of this as well as obtaining the City's promise that it would pay this expense, board president Johnson gave the City permission to remove the tree. Because these negotiations were successful, there was no need for any further legal proceedings. Even if there were such a need, Rao would not have had standing in these proceedings against the City for the tree's removal. According to the Condo Act, when a common element is taken or destroyed, the association, not the individual unit owners, becomes the named party in such proceedings and acts on the owners' behalf. See 765 ILCS 605/9.3 (West 2006).

Perhaps Rao has a claim against the association and its board for the tree's removal. This, however, we will not decide here as the board is not a party to this appeal. We simply hold that, as against the party she did in fact sue here, namely, the City, she has no claim under her current assertions.

Finally, we note that Rao contends that the City violated the Wrongful Tree Cutting Act and the Religious Freedom Restoration Act when it cut down her tree. These argument are waived. The record clearly shows that Rao never raised arguments under either of these acts in any of the legal documents or proceedings in the trial court below before or after it issued its orders, and does so only now on appeal for the first time. See *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1019 (2006) (arguments raised for first time on appeal are forfeited for appellate review). While she did include some mention of how the tree's removal impacted her religious beliefs, she did not do so until she filed an "affidavit" to her motion for reconsideration of the ~~trial~~ court's order, and she never stated any provisions, nor even alluded to the existence, therein of the Religious Freedom Restoration Act. Accordingly, and because we have already established that the tree did not belong to Rao, we need not address these arguments.

C. Ordinance 3-O-07 and Vagueness (Rao's contention #9)

We next examine Rao's contention that the City's Ordinance 3-O-07 passed for the project was unconstitutionally vague. She cites several reasons for this vagueness, including that the ordinance did not include information regarding the taking of the tree in question; who owned the tree; the exact site, nature and extent of the project; and alternative methods assessed taxpayers could use to pay the assessment.

All statutes are presumed valid and constitutional. See *General Motors Corp. v. State Motor Vehicle Review Bd.*, 361 Ill. App. 3d 271, 281 (2005). The burden of proving otherwise lies squarely on the statute's opponent. See *General Motors*, 361 Ill. App. 3d at 281. An ordinance is unconstitutionally void only "if it is 'so vague that persons of ordinary intelligence must necessarily guess at its meaning.'" *O'Donnell v. City of Chicago*, 363 Ill. App. 3d 98, 106 (2005), quoting *Waterfront Estates Development Inc. v. City of Palos Hills*, 232 Ill. App. 3d 367, 376-77 (1992); see also *Serpico v. Village of Elmwood Park*, 344 Ill. App. 3d 203, 216-17 (2003) (to succeed on vagueness challenge, opponent must show that ordinance's standards of application are insufficiently definite, and merely because opponent can conjure up some hypothetical questioning the ordinance's terms does not make it vague). Ultimately, as long as the provision is sufficiently definite so as to preclude arbitrary application, a vagueness challenge cannot stand. See *In re C.E.*, 161 Ill. 2d 200, 227-28 (1994)

The ordinance in the instant case is clear and definite. It is divided into nine different sections which together provide a comprehensive plan for the project and describe the site, nature and extent of the project. For example, section 1 precisely prescribes a special assessment for an alley paving project with an identifiable location, stating the project boundaries. Section 2 makes "by reference" part of the ordinance the BLI's recommendation and its estimate of cost, which includes the removal of the tree. Thus, this

section discusses the process the City will undertake to accomplish the project and all the financial concerns. Further, section 5 states that those assessed will be able to pay the assessment in 10 installments with a set interest rate. Based on all this, we find that any remaining "questions" Rao raises are nothing more than unsupported hypotheticals that do not render Ordinance 3-O-07 unconstitutionally vague.

D. Legal Description of Property (Rao's contention #3)

Rao contends that the trial court erred when it allowed the assessment despite the City's "incorrect legal description" of her property. Again citing section 9-2-47, she claims that the City's description of her property as "lying East of the center of Sherman Road" makes it impossible to accurately identify her property and renders the assessment and the trial court's judgment against her void.

We address this notion of misidentification once again because Rao consistently asserts it throughout this appeal. We have already discussed that Rao is only citing a portion of the City's description of the properties affected by the project, and that in the notice she received, as well as in the assessment roll filed with the court (which was divided into geographic locations), the City listed properties lying west of Sherman Avenue also to be affected and that Rao's property is described as part of that category. Indeed, as we noted earlier, the City's legal description included those properties "lying west of and

adjoining" Sherman Avenue. Thus, there is no support for her conclusion that her property was not accurately identified and that the trial court's judgment was therefore void.

Moreover, we wish to note that while Rao provided in the record on appeal the legal description of her condominium complex via a plat of survey, the description does not mention her specific property or that her property lies west of Sherman Avenue. She further provided a map printed from the City's website, but just as the plat, this does not specifically state that her property lies west of Sherman Avenue. She provides no other evidence on this point. Accordingly, while we have accepted her statements in this regard in response to her claims, we would be remiss if we did not, for the sake of a complete record, also note that the evidence provided may very well not state the reality of the situation.

E. Beneficial Objection (Rao's contention #5)

Rao next contends that her property has been assessed more than its proportionate benefit. According to her claim, because she only uses a "tiny fraction" of the alley to exit her property, because she no longer uses her underground garage (due to her objections regarding the tree's removal) and because the alley subjects her property to dangerous traffic, there was only a public benefit from the project for which she should not be required to pay or, at least,

not be required to pay in an amount equal to other unit owners.

There is no prescribed method regarding the levying of special assessments for local improvements. See *City of Highland Park, Special Assessment No. 389 v. Edward Hines Lumber Co.*, 130 Ill. App. 2d 664, 665 (1970). When a question is raised as to the benefits derived from a project imposing an assessment, the burden is on the municipality to show that the property is benefitted in the amount assessed. See *Village of Northbrook v. Steerup*, 16 Ill. 2d 530, 533 (1959). However, the assessment roll is *prima face* evidence of the correctness of the amount assessed and, in the absence of evidence to the contrary, entitles the municipality to have that roll, and the assessment amount, confirmed. See *Village of Northbrook*, 16 Ill. 2d at 533; accord *City of Chicago v. Marsh*, 250 Ill. 512, 514 (1911) (assessment roll is *prima facie* evidence that the property was benefitted to the extent of the assessment). This is because the assessing officer is presumed to have done his duty properly, and the roll will not be modified unless the assessment is clearly inequitable or so improper as to indicate fraud. See *City of Highland Park*, 130 Ill. App. 2d at 665-66. In fact, "[t]he necessity of a local improvement is a legislative determination expressed by ordinance and is presumed valid unless found unreasonable." *Village of Glen Ellyn v. Lami*, 10 Ill. App. 3d 243, 246 (1973).

The burden shifts to the objector to overcome this *prima facie* case by showing the fair cash market

value of the property before and after the improvement. See *Village of Glen Ellyn*, 10 Ill. App. 3d at 246; see also *Village of Northbrook*, 16 Ill. 2d at 533 (to overcome *prima facie* case, objector must show, via competent evidence, that her property will not be benefitted or that it is assessed more than its proportionate share); see also, *e.g.*, *McAuley v. City of Chicago*, 22 Ill. 563 (1859) (the regularity of all proceedings levying such an assessment are presumed valid and must be rebutted by objector by affirmative showing that something was improperly done). Elements of damage claimed by the objector cannot be speculative, imaginary, remote or inappreciable. See *Village of Northbrook*, 16 Ill. 2d at 536; accord *Marsh*, 250 Ill. at 514 (basis of assessment is enhanced market value of property, and benefit or detriment to objector, though perhaps a proper consideration, cannot alone determine this question); see also *Village of Glen Ellyn*, 10 Ill. App. 3d at 246 (opinion that improvement is unnecessary is not enough to overturn presumption of validity). Such claims simply will not sustain a objector's cause of action. See *Marsh*, 250 Ill. at 514 (objectors' objections to sidewalk improvement assessment that increased use of sidewalk would interfere with use by tenants, increased traffic would be nuisance, and new sidewalk would crack and break could not be accepted as conclusive evidence that property would receive no benefit and, thus, did not overcome municipality's *prima facie* case); *Village of Northbrook*, 16 Ill. 2d at 536 (where objector's claim that his property would not be benefitted by improvement because it would create traffic hazard and

decrease property value was unsupported by evidence and he provided no competent proof thereof, beneficial objection could not stand); *Village of Glen Ellyn*, 10 Ill. App. 3d at 246 (objectors' claim of no benefit received from assessed project was "without foundation in the evidence" where only evidence provided was their dislike of improvement and they failed to show property value before and after improvement); *City of Highland Park*, 130 Ill. App. 2d at 666 (objectors did not sustain burden of proof on issue of benefits in light of the city's *prima facie* case).

We find that Rao has not presented sufficient evidence to overcome the City's *prima facie* case, as established by the assessment roll, that the amount of the assessment as charged to her was proper in relation to the benefit she received from the project. Rao's personal beliefs regarding the project, along with how much she chooses to use the alley (more or less than others) and her allegation of dangers resulting from potentially increased traffic, simply do not support her claim here. In addition, we note that while Rao alludes to fair cash market values of units in her complex, she admittedly failed to present any of this evidence to the trial court and presents it for the first time in her brief on appeal. Moreover, even a quick examination further reveals that this "evidence" does not support her conclusion of "plummeted" sale prices after the project was completed. Instead, she compares the sale of four different units to each other – two sold before the project and two sold after the project – and fails to show how any of

these are comparable to each other or even similar to her unit. Such a comparison proves nothing; it is essentially a comparison of apples to oranges.

The total cost of the project was $155,406.76. The City elected to pay a 67% of this, as a portion of the project was located on property owned by the Housing Authority of Cook County. The City apportioned the remaining cost via a "unit cost" method, assessing each condominium unit owner whose property abutted the project equally. The City then filed the assessment roll bearing this out with the trial court. Without more on Rao's part here, we cannot say that the City's assessment was clearly inequitable or so unjust and improper as to indicate fraud requiring modification.

F. Remaining Claims (Rao's contentions #6, 8 and 10)

Finally, Rao's remaining three contentions assert that the City improperly ignored its own rules for filing the petition and allowed others to pressure condominium unit owners to agree to the project, that the City illegally assessed the Housing Authority of Cook County's property on a different basis than her own, and that the trial court erred by denying separate hearings for her legal and benefit objections. We find that none of these are meritorious.

Regarding the first of these claims, Rao asserts a laundry list of federal and state law violations regarding her due process and equal protection rights.

Essentially, she argues that the City committed mail fraud by allowing duplicate signatures from condominium unit owners to pad the approval percentage rate on the project to 51%, it did not enforce anti-speeding laws in the alley after it was paved, and it colluded with the association board to support the intimidation of unit owners (and the specific harassment she suffered) to sign the petition. Rao provides no legal or factual basis present in the record for any of this. Moreover, she demands relief under 42 U.S.C. § 1985 and related provisions regarding collusion for these allegations. However, the United States Supreme Court has made clear that, for section 1985 to apply, "there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' actions." *Griffin v. Breckenridge*, 403 U.S. 88, 102, 29 L. Ed. 2d 338, ___, 91 S. Ct. 1790, 1798 (1971). Rao has not alleged racial or class-based animus, nor has she presented any evidence of any invidiously discriminatory actions. To the contrary, we note that the City actually entertained Rao's assertions of collusion during this scenario, and BLI president Jennings directly sent Rao a letter informing her that the BLI (which included the mayor, superintendent and other high-ranking City officials) investigated her claims of collusion and fraud in the signatures; that they "checked and rechecked the petition" for duplicate signatures and twice-counted signatures, verifying that each owner matched recorded deed information; and that they did not find

"any irregular procedures used in obtaining" the signatures.

Regarding Rao's last claims, we find that they have been waived for our review. As to her assertion that her property was assessed differently than the Housing Authority of Cook County's property involved in the project, we note that she never presented this claim to the trial court in the proceedings below. Moreover, she presents no formal evidence with respect to this property she mentions. And, as to her assertion that the trial court erred in denying her separate hearings, we note that nowhere in the record does it indicate that Rao ever objected to the procedure used by the court below in addressing her cause, nor that she requested separate hearings regarding her legal and benefit objections. Rao provides no transcript from any hearing date. The only evidence in the record addressing this are the orders issued by the trial court, which clearly state that the court allowed Rao to present all her objections, listened to each of them and specifically concluded that all "the *legal and benefit objections* as filed" by Rao were unsustainable. (Emphasis added.) Without more, we find no support for Rao's contentions.

CONCLUSION

Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court confirming the special assessment and the validity of the City's actions.

Affirmed.

FITZGERALD SMITH, P.J., with O'MARA FROSSARD and TOOMIN, JJ., concurring.

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
County ~~District~~ Department

In the Matter of the Special Assessment Of the City of Evanston for the Public Alley North of Noyes, East of the CTA Railroad tracks	)))))	**Evanston Special Assessment No. 1489** **Court Case No. 2007 CO SA 003**

ORDER

This cause coming on to be heard, the City appearing, Objector(s) appearing/not appearing pro se/by counsel, Douglas Cannon, and the Court being fully advised in the premises, it is hereby ordered that:

1. On Objectors motion for reconsideration to modify the judgment entered on June 26, 2007 (the order granting confirmation of Evanston special assessment No. 1489), this motion is Denied.

2. The City's motion in opposition to Motion for Reconsideration is granted.

3.) The affadavit [sic] of objector Padma Rao that was presented in Court on today's date of hearing is made part of the record.

4.) The alley paving project shall proceed as scheduled for construction.

Atty No. 40107
Name Elke Tober-Purze
Attorney for City of Evanston
Address 2100 Ridge Avenue
City Evanston, Illinois 60201
Telephone (847) 866-2937

ENTER: August 24, 2007

/s/ Susan Fox Gillis 1793
Judge **Judge's No.**

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COURT FILE COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

IN THE MATTER OF THE SPECIAL ASSESSMENT OF THE CITY OF EVANSTON FOR THE PUBLIC ALLEY NORTH OF NOYES STREET, EAST OF THE CTA RAILROAD TRACKS.	Court File No. **2007COSA003** **EVANSTON SPECIAL ASSESSMENT NO. 1489**

ORDER OF CONFIRMATION OF SPECIAL ASSESSMENT

THIS CAUSE COMING ON TO BE HEARD on Motion of Elke B. Tober-Purze, Attorney in the above cause for the City of Evanston, Illinois, and the Board of Local Improvements of said City of Evanston, Illinois; and the Court heretofore having set this day for application to be made to this Court for the confirmation of said Special Assessment; and Notices having been mailed to all persons paying taxes on the respective lots, blocks, tracts and parcels of land assessed for the proposed improvement, and Notices having been published and posted in regard to such application for confirmation of said Special Assessment, all in accordance with the law as evidenced by Certificates and Affidavits presented to and filed with the Court in these proceedings; ~~and no Objections~~

~~having been filed to said Special Assessment or to the confirmation thereof~~ [and finds that the legal and benefit objections as filed are not sustained and that the City has met its burden as to the benefit on subject properties db/SFG]; the Court accordingly finds that it has jurisdiction of the subject matter and of the parties involved and that said Evanston Special Assessment *No. 1489 (No. 2007COSA003)* should be confirmed, and said improvements made and Warrant issued for the cost thereof.

IT IS, THEREFORE, HEREBY ORDERED that said Evanston Special Assessment *No. 1489 (No. 2007COSA003)*, for the cost of the improvement herein described in accordance with the Special Assessment Roll filed herein, be and the same is hereby in all respects confirmed; and the Board of Local Improvements of the City of Evanston be and it is hereby authorized to proceed with the construction of said improvement; and that the necessary Warrant issued for the cost thereof as set forth in the records herein and in accordance with the law.

ENTER:

/s/ Susan Fox Gillis 1793
Judge

Dated: June 26, 2007

HERBERT D. HILL 24497
ELLEN SZYMANSKI 54806
ELKE B. TOBER-PURZE 40107
KENNETH R. COX 45264
BRADFORD R. YATABE 45263

CITY *of* EVANSTON LAW DEPARTMENT
2100 RIDGE AVENUE
EVANSTON, ILLINOIS 60201
(847) 866-2937

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

November 25, 2009

Padma Rao
2246 Sherman Avenue
Evanston, IL 60201

No. 109040 – City of Evanston, respondent, v. Padma Rao, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 30, 2009.

CONSTITUTIONAL

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY

42 US Code §1981

Sec. 1981. Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 US Code §1982

Sec. 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 US Code §1983

Sec. 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to

the District of Columbia shall be considered to be a statute of the District of Columbia.

42 US Code §1985

Sec. 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified,

or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United

States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 US Code §1986

Sec. 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000

damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 US Code §1988

Sec. 1988. Proceedings in vindication of civil rights

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

Certificate as Keeper of
Records, Files and Seals

STATE OF ILLINOIS)
) §
COUNTY OF COOK)

(Filed Apr. 19, 2007)

I, MARY P. MORRIS, City Clerk of the City of Evanston in the County of Cook and State aforesaid, and Keeper of the Records, Files and Seal of said City, do hereby certify that attached hereto is a true and correct copy of Ordinance 3-0-07, which approves the construction of a Local Improvement known as Evanston Special Assessment No. 1489, north of Noyes Street, east of the CTA railroad tracks, with attachments

all of which appears from the records and files in my office.

[SEAL] **IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of Evanston this**

11th day of April 20 07

/s/ Mary P. Morris
City Clerk

1/2/2007

3-O-07

AN ORDINANCE

for the Construction of a Local Improvement known as Evanston Special Assessment No. 1489 North of Noyes Street, East of the CTA Railroad Tracks

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, ILLINOIS:

SECTION 1: That a local improvement shall be made within the City of Evanston, County of Cook, and State of Illinois, the nature, character, locality and description of which is as follows, *to-wit*:

> That the unimproved public alley in the block bounded by Colfax Street on the north, Noyes Street on the south, CTA Railroad on the west, and Sherman Avenue on the east, in the City of Evanston, be improved by excavating, constructing the necessary drainage system and paving with 8" Portland Cement Concrete Pavement to a width of twelve feet (12') and the South leg to a width of fourteen feet (14').

SECTION 2: That the Recommendation of this Ordinance by the Board of Local Improvements of the City of Evanston, Illinois, and the Estimate of the cost of said improvement made by the Engineer of said Board, both hereto attached, be and the same are

hereby approved and by reference thereto made a part hereof.

SECTION 3: That said improvement shall be made and the cost thereof, including the sum of One Hundred Fifty-Five Thousand, Four Hundred Six and 76/100 dollars ($155,406.76), being the cost of making and collecting the Assessment and all other expenses as provided by law, shall be paid for by Special Assessment in accordance with the *Illinois Municipal Code*, Chapter 65, Section 5/9-2-1 *et seq.*

SECTION 4: That One Hundred Five Thousand, Two Hundred Forty and 37/100 dollars ($105,240.37) of the cost of said improvement shall be allocated by the City, and Fifty Thousand, One Hundred Sixty-Six and 39/100 dollars ($50,166.39) as private benefit.

SECTION 5: That the aggregate amount to be assessed and each individual assessment shall be divided into ten (10) installments in the manner provided by law, and each of said installment shall bear interest at the rate of seven percent (7%) per annum from sixty (60) days after the date of the first voucher issued on account of work done upon said proposed improvement.

SECTION 6: That, for the purpose of anticipating the collection of the installments of said assessment levied against the real estate benefited thereby, general obligation bonds have been issued, fifty percent (50%) of which are payable by the City and fifty percent (50%) of which are payable out of said installments, bearing interest at the rate of seven

percent (7%) per annum, payable annually and signed on behalf of the City of Evanston, Illinois, by its Mayor and attested by its City Clerk and its corporate seal affixed thereto; and each interest coupon attached to said bonds shall likewise be executed by and shall bear the official or facsimile signature of the same officers who signed said bonds and who, if facsimile signatures are used, do adopt by their execution of said bonds as and for their proper signatures their respective facsimile signatures appearing on said coupons; and that said bonds shall be issued in accordance with and shall be in all respects conform to the provisions of an Act of the General Assembly of the State of Illinois, knows as the *"Illinois Municipal Code"*, effective July 1, 1961, and the Amendments thereto.

SECTION 7: That David Jennings, President of the Board of Local Improvements of the City of Evanston, Illinois, be and he is hereby directed to file a Petition in the County Court of Cook County, Illinois, praying that steps may be taken to levy a Special Assessment to pay the cost of said improvement in accordance with the provisions of this Ordinance and in the manner prescribed by law.

SECTION 8: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 9: That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Adopted by the City Council of the City of Evanston, Illinois on the 26th day of March, 2007.

Approved:

April 3, 2007

/s/ Lorraine H. Morton
Lorraine H. Morton,
Mayor

Attest:

/s/ Mary P. Morris
Mary P. Morris,
City Clerk

Approved as to form:

/s/ Herbert D. Hill
Herbert D. Hill
First Assistant
Corporation Counsel

SPECIAL ASSESSMENT NO. 1489

RECOMMENDATION OF THE BOARD OF LOCAL IMPROVEMENTS TO THE CITY COUNCIL OF THE CITY OF EVANSTON ILLINOIS

The Board of Local Improvements of the City of Evanston, Illinois, herewith submits the draft of an Ordinance for the making of a local improvement within the City of Evanston, County of Cook, and State of Illinois, the nature, character, locality and description of which is as follows, *to-wit*:

> That the unimproved public alley in the block bounded by Colfax Street on the north, Noyes Street on the south, CTA Railroad on the west, and Sherman Avenue on the east, in the City of Evanston, be improved by excavating, constructing the necessary drainage system and paving with 8" Portland Cement Concrete Pavement to a width of twelve feet (12') and the South leg to a width of fourteen feet (14').

And as part of said Ordinance and in conjunction therewith, said Board also herewith submits the plans and specifications of an Estimate of the cost of said improvement including the cost of engineering services, as finally determined by said Board; and said Board hereby recommends the passage of said

Ordinance and the making of the improvement described therein.

Respectfully submitted,

BOARD OF LOCAL
IMPROVEMENTS
CITY OF EVANSTON, ILLINOIS

By: /s/ David C. Jennings
/s/ [Illegible]
/s/ [Illegible]
/s/ [Illegible] A. Grady, III

APPROVED AS
TO FORM:

/s/ [Illegible]
Attorney for the
Board of Local
Improvements of
the City of
Evanston, Illinois

HERBERT D. HILL 24497
ELLEN SZYMANSKI 54806
ELKE B. TOBER-PURZE 40107
KENNETH R. COX 45264
BRADFORD R. YATABE 45263
CITY OF EVANSTON LAW DEPARTMENT
2100 RIDGE AVENUE
EVANSTON, ILLINOIS 60201
(847) 866-2937

ESTIMATE OF ENGINEER OF BOARD OF LOCAL IMPROVEMENTS

To the Board of Local Improvements of the City of Evanston:

Pursuant to a Resolution of the Board of Local Improvements of the City of Evanston, heretofore adopted, providing that the unimproved public alley in the block bounded by Colfax Street on the north, Noyes Street on the south, CTA Railroad on the west, and Sherman Avenue on the east, in the City of Evanston, be improved by excavating, constructing the necessary drainage system and paving with 8" Portland Cement Concrete Pavement to a width of twelve feet (12') and the South leg to a width of fourteen feet (14').

Said improvement to be constructed in detail as specified in aforesaid Resolution.

I, herewith submit an estimate of cost of such improvement as described in said Resolution, including labor, materials, and all other lawful expenses attending the proceedings for making said improvement and the cost of making and collecting the assessment therefore as provided by law, viz:

COST ESTIMATE

ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL
EARTH EXCAVATION	CU. YD.	258	50.00	$12,900.00
TRENCH BACKFILL	CU. YD.	179	35.00	$ 6,265.00
SUB-BASE GRANULAR MATERIAL, TYPE B	CU. YD.	10	35.00	$ 350.00
GRANULAR CRADLE MATERIAL, CA-11	TON	90	35.00	$ 3,150.00
AGGREGATE BASE COURSE, TYPE B, 6"	SQ. YD.	280	6.00	$ 1,680.00
INCIDENTAL BITUMINOUS SURFACING	TON	45	140.00	$ 6,300.00
PORTLAND CEMENT CONCRETE PAVEMENT, 8"	SQ. YD.	820	55.00	$45,100.00
STORM SEWERS, 10", TYPE 1, (R.C.P./CLV)	LIN. FT.	392	55.00	$21,560.00
CATCHBASINS, TYPE A, 4' DIAMETER, TYPE 1 FRAME, CLOSED LID	EACH	1	3,500.00	$ 3,500.00
MANHOLE, TYPE A, 4' DIAMETER, TYPE 1 FRAME, OPEN LID	EACH	1	3,500.00	$ 3,500.00
INLET, TYPE A, TYPE 1 FRAME, OPEN LID	EACH	3	1,500.00	$ 4,500.00
CONCRETE CURB, TYPE B	FOOT	185	20.00	$ 3,700.00
PAVEMENT REMOVAL	SQ. YD.	25	15.00	$ 375.00
CURB REMOVAL	FT.	185	5.00	$ 925.00
DRIVEWAY PAVEMENT REMOVAL	SQ. YD.	345	15.00	$ 5,175.00
SIDEWALK REMOVAL	SQ. FT.	260	2.00	$ 520.00
PORTLAND CEMENT CONCRETE DRIVEWAY PAVEMENT – 6"	SQ. YD.	80	40.00	$ 3,200.00
PORTLAND CEMENT CONCRETE SIDEWALK – 5"	SQ. FT.	260	5.00	$ 1,300.00
PROTECTIVE SEALER	SQ. YD.	900	2.00	$ 1,800.00
CRUSHED STONE, CA-14	TON	20	40.00	$ 800.00
BITUMINOUS SURFACE REMOVAL	SQ. YD.	30	10.00	$ 300.00
PAVEMENT REMOVAL & P.C.C. REPLACEMENT SPECIAL – 9" (H.E.S.)	SQ. YD.	55	100.00	$ 5,500.00
BRICK PAVEMENT REMOVAL AND REPLACEMENT, SPECIAL	SQ. YD.	15	100.00	$ 1,500.00
FURNISHING AND PLACING TOPSOIL, 3"	SQ. YD.	60	5.00	$ 300.00
SODDING, SALT TOLERANT	SQ. YD.	60	10.00	$ 600.00
CONSTRUCTION LAYOUT AND STAKING	LUMP SUM	1	2,100.00	$ 2,100.00
CLOSED CIRCUIT TV INSPECTION	LUMP SUM	1	2,000.00	$ 2,000.00
DETECTABLE WARNINGS	SQ. FT.	45	15.00	$ 675.00
TREE REMOVAL (OVER 15" DIAMETER)	IN. DIA.	24	125.00	$ 3,000.00

Cost of Engineering Services	$	6,415.88
For Lawful Expenses, etc.....	$	6,415.88
.....	$	12,831.76

RECAPITULATION

Total Cost of Construction	$	142,575.00
Cost of Engineering Services	$	6,415.88
For Lawful Expenses, etc.....	$	6,415.88
Total Cost of Improvement	$	155,406.76

I hereby certify that in my opinion the above estimate does not exceed the probable cost of the above proposed improvement and the lawful expenses attending the same.

/s/ Sat Nagar
Sat Nagar, P.E.
Senior Engineer
Board of Local Improvements

ADHERING RESOLUTION OF THE BOARD OF LOCAL IMPROVEMENTS RECOMMENDING THE IMPROVING OF THE ALLEY NORTH OF NOYES STREET, EAST OF THE CTA RAILROAD TRACKS

Special Assessment No. 1489

WHEREAS, on the 11th day of September, 2006, a Resolution was adopted by the Board of Local Improvements of the City of Evanston originating a local improvement in said City providing the following:

> That the unimproved public alley in the block bounded by Colfax Street on the north, Noyes Street on the south, CTA Railroad on the west, and Sherman Avenue on the east, in the City of Evanston, be improved by excavating, constructing the necessary drainage system and paving with 8" Portland Cement Concrete Pavement to a width of twelve feet (12') and the South leg to a width of fourteen feet (14').

WHEREAS, a public hearing was held by this Board on the 10th day of January, 2007, at 7:00 p.m., on the question of the necessity of the proposed improvement; and

WHEREAS, all persons interested in said proposed improvement who desired to be heard were heard, and no sufficient reason or objection was given or made to the proposed improvement, and based on the proof submitted to this Board, this Board finds that good and sufficient notices of said public hearing were given and mailed as required by law,

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Local Improvements of the City of Evanston, Cook County, Illinois:

SECTION 1: That the aforesaid proposed improvement described in the original Resolution adopted the 11th day of September, 2006, and as shown on the plans attached to the original Resolution and the Estimate of the cost of said improvement, be adhered to.

SECTION 2: That the Ordinance now before this Board of Local Improvements and prepared at the request of the Board, be and the same is hereby approved and that each member of the Board of Local Improvements be requested to sign the Recommendation attached to the said Ordinance, recommending to the City Council of the City of Evanston the passage of said Ordinance.

SECTION 3: That the Secretary of the Board of Local Improvements be and he is hereby requested to deliver to the City Council of the City of Evanston the Ordinance for said improvement, the Estimate of the cost of said improvement as attached thereto together with the Recommendation of this Board of Local Improvements, and that copies of said Recommendation, Estimate, and Ordinance be placed on file in the records of the Board of Local Improvements.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval.

ADOPTED THIS 12 day of December, ~~2007~~ 2006

FILED IN MY OFFICE:

This 12 day of December, ~~2007~~ 2006

/s/ [Illegible] A. Grady, III
Secretary

BOARD OF LOCAL
IMPROVEMENTS
CITY OF EVANSTON, ILLINOIS

By: _____
/s/ [Illegible]

APPROVED AS
TO FORM:

/s/ [Illegible] A. Grady, III

/s/ [Illegible]

/s/ [Illegible]
Attorney for the
Board of Local
Improvements of
the City of
Evanston, Illinois

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

IN THE MATTER OF THE SPECIAL ASSESSMENT OF THE CITY OF EVANSTON FOR THE PUBLIC ALLEY NORTH OF NOYES STREET EAST OF THE CTA RAILROAD TRACKS.	**2007 CO S.A. 000003** **Docket No. 1489** **EVANSTON SPECIAL ASSESSMENT NO. 1489**

OBJECTOR PADMA RAO'S AFFIDAVIT

(Filed Aug. 24, 2007)

I, Padma Rao, of 2246 Sherman Avenue #3, Evanston, Illinois located within the County of Cook, affirm the following:

From the time I was a young child, my parents taught me the major tenets of our religion, Hinduism: that all living things, whether animal or plant, contain divine energy and therefore deserve respect and should not be needlessly harmed (*ahimsa*); and that I have an imperative duty (*dharma*) to respect and protect all living things and to strive to do what is right, not just what is convenient. *Dharma* is an obligation in my religion and is not limited only to my direct actions; it also requires me to prevent needless harm from being done to any living thing – "That mode of

living which is founded upon a total harmlessness towards all creatures or (in case of actual necessity) upon a minimum of such harm, is the highest morality." (Mahabharata Santi Parva 262.5-6).

Trees are particularly revered in my religion, as they symbolize longevity and they provide shade, clean air, food, medicine, and comfort. It is a sin to kill a tree for no reason; it is also a sin to allow a tree to be killed when it can be protected. In the farming village where my mother grew up, a house was built around a tree such that the tree was able to thrive and the family enjoyed its blessings. My mother's mother had been the village elder since she was in her 20's; she was a devout Hindu who was taught by her *guru-ji* about the healing properties of plants and trees (*ayurvedic* medicine). Every morning, she thanked the Sun for giving light and life and she thanked her trees and plants for giving food, shelter, and medicines; the latter she shared freely with anyone in need. The entire village benefited from her wisdom and selfless devotion to all living things. My grandmother's example taught me to respect all life and that trees deserve particular gratitude as the source of clean air, food, and medicines.

As a physician, I took an oath that includes "*primum non nocere*", which means first do not harm. To me as a Hindu, this duty extends not only to people but to all living beings, including trees and plants. It is my responsibility to speak for those who cannot speak for themselves and to protect those who cannot protect themselves. Although I did not openly refer to my

religious beliefs for fear of being ridiculed, I advocated for the protection of trees before the Evanston City Council (24 July 2006 and P&D Committee on 11 September 2006).

I strongly object to the City forcing me to violate the most basic principles of my religion. Members of the BLI and City Council have stated that my tree can be spared but they insist on including its destruction in their ordinance. Using my taxes to seek to murder my tree leaves me no choice; my religion requires me to do all within my power to prevent such an atrocity.

/s/ Padma Rao
Padma Rao

CERTIFICATION

I, PADMA RAO, pursuant to CCP 1-109, do hereby certify under penalties of perjury that the above affidavit is true and correct to the best of my knowledge and belief.

/s/ Padma Rao
Padma Rao